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ALEXANDER L. STEVAS,
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No. 84-433.

In the

Supreme Court of the United States.

OCTOBER TERM, 1984.

SCHOOL COMMITTEE OF THE TOWN OF BURLINGTON, MASSACHUSETTS, TOWN OF BURLINGTON, MASSACHUSETTS,
PETITIONERS,
v.
DEPARTMENT OF EDUCATION OF THE COMMONWEALTH OF MASSACHUSETTS, ROBERT PANICO A/K/A JOHN DOE, SR., AS HE IS NEXT FRIEND OF MICHAEL PANICO A/K/A JOHN DOE, JR.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

JOINT APPENDIX

Volume I

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JUDITH S. YOGMAN,
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Petition for Certiorari Filed September 18, 1984
Certiorari Granted December 3, 1984

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Relevant Docket Entries

February 26, 1980	— Complaint of School Committee, Town of Burlington filed in the United States District Court for the District of Massachusetts.
April 30, 1980	— Complaint with substitute captions filed.
May 8, 1980	— Plaintiffs' motion for stay (request for Preliminary Injunction) filed.
July 24, 1980	— Decision of the District Court, Judge Zobel, denying Plaintiffs' motion for stay entered.
July 31, 1980	— Plaintiffs' Motion for Summary Judgment filed.
August 8, 1980	— Notice of Appeal by Plaintiff filed.
August 29, 1980	— Attorney Berman's letter of August 26, 1980 with attachments filed.
October 3, 1980	— Defendant Department of Education's Motion for Summary Judgment on Count II filed.
October 7, 1980	— Defendants' Doe Motion for Summary Judgment on Counts I and II filed.
November 19, 1980	— Memorandum of Decision and Judg- of the District Court, Judge Zobel, allowing Defendants' Motions for Summary Judgment on Count II entered.
December 11, 1980	— Plaintiff's Notice of Appeal filed.
December 12, 1980	— Defendant Department of Education's Motion to Amend Answer by adding Counterclaim and Motion for Preliminary Injunction on Counterclaim filed.

December 16, 1980 — Defendant Doe's memorandum filed.

December 24, 1980 — Plaintiffs' Further Statement in Opposition to Application for Preliminary Injunction.

December 29, 1980 — Plaintiff's Motion to Amend Complaint filed.

January 9, 1981 — Motion for Stay Pursuant to Rule 8(a) F.R.A.P. filed in the Court of Appeals.

January 28, 1981 — Memorandum and Order of the First Circuit Court of Appeals denying the Motion for a Stay entered.

February 9, 1981 — Plaintiffs' Motion to Amend Complaint filed.

February 12, 1981 — Order of the District Court, Judge Zobel, that pending final determination on the merits the Town of Burlington shall reimburse the Defendant Doe for expenses paid or now due in connection with the educational placement of Doe, Jr. entered.

February 18, 1981 — Plaintiffs' Notice of Appeal filed.

June 18, 1981 — Opinion and Judgment of the First Circuit Court of Appeals, vacating District Court's grant of Summary Judgment and Order of February 12, 1981 and affirming denial of preliminary injunction entered.

July 9, 1981 — Mandate from the First Circuit Court of Appeals with instructions that Count II be dismissed and trial proceed on Count I received.

November 24, 1981 — Motion of Plaintiffs for Summary Judgment filed.

March 18, 1982 — Pretrial Order of the District Court, Judge Zobel, entered.

May 13, 1982 — Civil non-jury trial commences before Judge Zobel.

June 22, 1982 — Plaintiff's post-trial Brief filed.

August 13, 1982 — Memorandum of decision of the District Court, Judge Zobel, to the effect that the Town is not responsible for the Defendant Doe's education expenses for the years 1979-1982 entered.

September 9, 1982 — Defendants' Motion for Reconsideration and/or New Trial Filed.

September 30, 1982 — Defendants' Motion for Reconsideration and/or New Trial Denied, Judge Zobel

October 29, 1982 — State Defendants Memorandum in Support of its Opposition to Plaintiffs' proposed form of judgment filed.

January 17, 1983 — Stipulation of Facts on Plaintiffs' Request for Reimbursement filed.

March 7, 1983 — Opinion of the District Court, Senior Circuit Judge Aldrich (sitting by designation), ordering reimbursement of the Town subject to the Defendants' showing of the Town's actual savings filed.

May 10, 1983 — Judgment of the District Court, Judge Zobel, entered May 9, 1983.

June 6, 1983 — State Defendant's Notice of Appeal filed.

June 7, 1983 — Defendants' Doe Notice of Appeal filed.

June 8, 1983	— Plaintiffs' Cross-Appeal filed.
May 29, 1984	— Opinion and Judgment of the First Circuit entered.
June 18, 1984	— Plaintiffs' Petition for Rehearing en banc filed in the First Circuit Court of Appeals.
June 29, 1984	— Order of the First Circuit Court of Appeals denying the petition for rehearing en banc, entered.
July 9, 1984	— Mandate issued; the judgment of the District Court reversed in part, affirmed in part and the case remanded.
September 18, 1984	— Petition for Writ of Certiorari filed in the Supreme Court of the United States.
December 3, 1984	— Order of the Supreme Court of the United States entered granting the Petition limited to questions I and V presented.

[The following pages 5 through 49 contain selected BSEA hearing exhibits, which were offered collectively at the District Court Trial on May 14, 1982 as Plaintiffs' Exhibit 2 at Tr. 2-37 (R.A. II, p. 2-37), and are found in R.A. Volume IV as noted.]

[BSEA Exhibit, found at R.A. IV, p. 135.]

BURLINGTON PUBLIC SCHOOLS
BURLINGTON, MASSACHUSETTS

May 31, 1979

Mr. and Mrs. Robert Panico
28 Fieldstone Drive
Burlington, Mass. 01803

Dear Mr. Panico,

I appreciate your phone call of May 30, 1979, indicating your intent to have Dr. Lott coordinate any psychological assessments for Michael through the Mass General Hospital.

I have taken the liberty of sending to Dr. Lott the additional educational assessments that were carried out in May, 1979.

I am sorry that the appointment scheduled with Mr. McAleer could not be mutually arranged, and look forward to your meeting him directly at the June 4, 1979 meeting at Memorial School.

Per your request, I will contact Dr. Lott so that we may discuss any outstanding concerns regarding more testing for Michael.

Thank you for your continued cooperation in trying to provide appropriate education planning according to Michael's needs.

Sincerely,
/s/
Jean Arin
Core Evaluation
Administrator

JA:lt
Enclosures
cc: Dr. Lott
Kevin Foley

[BSEA Exhibit, found at R.A. IV, p. 136]

BURLINGTON PUBLIC SCHOOLS
BURLINGTON, MASSACHUSETTS

May 31, 1979

Dr. Lott
Mass General Hospital
Boston, MA 02114

Re: Michael Panico

Dear Dr. Lott,

In order to insure that you have the total packet of information regarding Michael Panico, I am enclosing our most recent assessments that will be presented at the June 4, 1979 meeting for Michael.

I look forward to being able to discuss with you any additional testing.

Thank you for your cooperation in developing appropriate educational planning for Michael according to his specific needs.

Sincerely,
/s/
Jean Arin
Core Evaluation
Administrator

JA:lt
Enclosures
cc: Kevin Foley
Mr. and Mrs. Panico

[BSEA Exhibit, found at R.A. IV, pp. 149-162, 164-177, 398-409 and 511-524. The format has been changed slightly to accomodate printing requirements.]

School: Pine Glen
Type of Evaluation: Full

EDUCATIONAL PLAN: GENERAL AND SPECIFIC OBJECTIVES/ DELIVERY OF SERVICES

1. Name: MICHAEL PANICO Date of Birth: 9-7-70
Address: 28 Fieldstone Drive City: Burlington

2. Participants:

Name	Position	Name	Position
Jean Arin		Beck Silverstein	
Richard Cavanaugh		Mrs. Hennessey	
Patricia Meade		Mr. and Mrs. Panico	
Katherine Black		Myra Fournier	
Gail Mason			

3. This Educational Plan covers the period June, 1979 to June, 1980.

4. General Objectives:

Based on the various demonstrated performances as indicated by the assessments, what are the general long term (one year) objectives for the student?

Pd. No.	
1	To attain grade level reading skills.
2	To apply mastered phonetic skills to reading.
3	To increase visual memory for sight vocabulary.
4	To continue to develop decoding and encoding skills of affixes.
5	To develop oral reading fluency.

6 To increase auditory and visual sequential memory processing skills.
7 To continue academic growth in all subject areas — spelling, math, written and oral.
8 To improve handwriting skills.
9 To improve understanding of directionality.
10 To increase self-confidence in academic areas.
11 To be able to express feelings.
12 To improve attention span and diminish distractibility.
13 To develop positive independent work habits for task completion.

MICHAEL PANICO

Learning Style/Physical Constraints
Provide information relevant to the instruction and attainment of objectives

Michael is an 8 year, 5 month old boy in the third grade. His general mental ability has been measured as "high average" or "superior" on various assessments with no significant differences noted between his verbal and non-verbal scores. Testing indicates adequate performance in expressive and receptive language processes. In most areas, he scored above his chronological age with the one exception of auditory attention span for unrelated words on which he scored 7 years 9 months. Michael performs satisfactorily in a third grade classroom; however, he has difficulty remembering on a day-to-day basis skills previously taught. Although Michael's oral reading is slow and labored, he demonstrates the ability to use context clues for self correction and is able to comprehend main ideas and details from selected passages. Limited sight vocabulary hinders oral fluency for appropriate level reading materials. Michael relies on word configuration rather than focusing on

letters. Michael's visual integration problem causes him difficulty in processing the syllable into a whole; thus, his weak visual memory for whole words limits his word recognition skills. Although Michael's short term visual memory task performance is good (exposure time up to 10 seconds) a longer exposure time results in poorer visual memory performance. He presently is unable to use his word attack skills spontaneously. Because of his distractibility and limited attention for task completion, supervision is necessary for successful completion of prescribed tasks. Activities fostering the development of independent work habits should be encouraged. Michael enjoys reading material relating to animals. Michael's handwriting needs continued reinforcement for neatness and form.

Michael has a positive self image regarding his body and competence in sports activities. However, Michael perceives that adult and peer expectations for academic performance are beyond his reach. The perceived negative attitudes concerning academic competence, contribute to his questioning his self worth and cause him to become anxious, sad and angry. The cycle of negative attitudes and feelings cause depression and results in Michael's difficulty to focus attention on tasks and to exert sufficient energy for task completion to meet with success.

MICHAEL PANICO

Learning Style/Physical Constraints (continued)
Michael uses defense mechanisms of distantiation, repression, and denial to avoid dealing with the perceived conflicts. Thus, he becomes more demanding and critical of himself, and questions his self worth. Michael is presently being medicated for migraine headaches under the care and treatment of Dr. Lott, Mass General Hospital.

Counseling support and a comfortable supportive small group environment will be necessary to assist Michael in diminishing his negative feelings related to school work. Materials should be presented in non-timed success insured segments to assist Michael in developing academic confidence. A multisensory approach to reading with much repetition and drill to compensate for the visual memory integration problem will be helpful. Tasks that appear to Michael too difficult should be broken down in step by-step deliberate order to diminish impulsive and wholistic responses and to diminish personal frustrations.

[This page is intentionally left blank.]

			6.1		6.2	
			CORE EVALUATION TEAM			
Pd. No.	Spec. Obj. #	Specific Objectives	Quarters (12 Mo. Yr.) i.e., 3 Mo. Intervals	Class	Small Group	Individual
1-	1	To continue syllabication skills.			X	X
	2	To develop more speed in word attack.			X	X
	3	To foster stronger phonetic application in word attack.			X	X
	4	To review suffixes, prefixes, and endings.			X	X
	5	To reinforce short vowel sounds.			X	X
	6	To respond to questions containing 5 elements.			X	X
	7	Michael will be able to read without hesitation common phonetically regular words that are practiced on individual cards.				X
	8	Michael will read without hesitation words in isolation from the Dolch Sight Vocabulary list.				X
1-4	1	Michael will be able to answer questions on literal, informational and critical level from reading appropriately selected materials				X

8.1		8.2		8.3
ADMINISTRATOR OF SPECIAL ED./DESIGNEE				
Reg.	Prog. Spec.	Start Date Mo. Day Yr.	Service Provider	Location
	X	9/79	John McAleer	Pine Glen
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"

6.1 6.2

CORE EVALUATION TEAM

Pd. No.	Spec. Obj. #	Specific Objectives	Quarters (12 Mo. Yr.) i.e., 3 Mo. Intervals	Class	Small Group	Individual
1-6	1	Michael will read aloud stories concerning animals and nature and high interest materials				X
	2	Michael will orally answer questions pertaining to taped stories in correct sequence.				X
	3	Michael will choose words to learn spontaneously from language experience stories.				X
6	1	Michael will appropriately sequence from tapes, pictures of story.				X
	2	Michael will be able to illustrate a story in sequential order after silently reading appropriately selected materials.				X
	3	Michael will be able to orally present a story in correct sequence after reading appropriate passage.				X
7	1	Michael will learn to spell common everyday words by saying, tracking, and writing them as he says them.				X
	2	Michael will complete all assignments for subject areas presented.				X
	3	Michael will be able to produce and understand different sentence types (declarative, interrogative, imperative, question.)			X	X
	4	Michael will be able to include appropriate grammatical elements within sentences of different types			X	X

8.1		8.2		8.3
ADMINISTRATOR OF SPECIAL ED./DESIGNEE				
Reg.	Prog. Spec.	Start Date Mo. Day Yr.	Provider	Service Location
	X	9/79	John McAleer	Pine Glen
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"
	X	"	"	"

6.1 6.2

CORE EVALUATION TEAM

Pd. No.	Spec. Obj. #	Specific Objectives	Quarters (12 Mo. Yr.) i.e., 3 Mo. Intervals	Class	Small Group	Individual
8	1	Michael will be able to form his letters with more precision and neatness.				X
9	1	Michael will work on left right progression skills in fine motor tasks.				X
	2	Michael will work on left/right tracking skills.				X
10 12	1	Michael will be able to develop a positive self-image regarding his strengths.			X	X
	2	Michael will be able to identify situations that cause frustrations.				X
	3	Michael will develop skills in paying attention during a small group lesson for a period of 15 minutes.				X
13	1	Michael will be able to follow simple written directions independently on a worksheet.				X
	2	Michael will work independently on reading worksheets with no assistance for task completion — up to 10 min.				X

8.1		8.2		8.3
ADMINISTRATOR OF SPECIAL ED./DESIGNEE				
Prog. Reg.	Prog. Spec.	Start Date Mo. Day Yr.	Service Provider	Location
	X	9/79	John McAleer	Pine Glen
	X	"	J. LeVasseur Adapt. P.E.	Pine Glen
	X	"	"	"
	X	"	"	"
	X	"	John McAleer	"
	X	"	"	"
	X	"	"	"
	X	"	"	"

Criteria (demonstrated skills) for student's movement to next less restrictive program prototype:

Formal and informal assessments will be carried out. When objectives have been met, a review will be held to determine placement in a less restrictive prototype.

Describe this student's transportation plan:

Special transportation to and from Pine Glen daily.

Designated liaison person, Name: John McAleer — Classroom teacher

Position:

If placement outside the LEA is recommended complete the following:

I certify that the (facility) _____ is able to provide the services required by this plan.

Signature: _____ Date: _____

(Director of Accepting Facility)

I certify that the above objectives are those recommended by the core evaluation team, and that the above indicated services will be provided.

Signature: /s/ Jean Arin Date: June 28, 1979
(Special Education Admin./Designee)

I certify that the above objectives are those recommended by the core evaluation team, and that the above indicated services will be provided.

Signature: _____ Date: _____

(Building Principal)

Response of Parents/Guardian/Student:

a. ☐ I accept the educational plan outlined above.

b. ☒ I DO NOT accept the educational plan outlined above.

c. Comments: _____ Date: 7/3/79

I understand that I may seek a second opinion or independent evaluation as provided in the Chapter 766 regulations.

Signature /s/ Robert A. Panico

(Parent/Guardian/Student)

STUDENT Michael Panico
SCHOOL Pine Glen
DATE OF PLAN September, 1979
COUNSELOR John McAleer/
Susan Cohen

ADDITION TO INDIVIDUAL EDUCATIONAL PLAN

PERFORMANCE LEVEL (What the student can do now):

Michael has a sight vocabulary of at least 200 words. He can recognize and divide multisyllablic words in written form. Michael is able to use the suffixes s, ed, ing, y, ly, ful, es, est, tion; he can use the prefixes re, un, dis, pre, non, mis, anti, in, and, im. Michael is able to skim reading passages to locate details and overview idea. He is able to understand the formation of plurals f to v, y to i, etc. Michael knows the vowel combinations ay, ai, ce, ou, er, is, or, ar.

Gen. Obj. #
TEACHING APPROACH AND METHODOLOGY (Tied to general objectives):

1-7 Combination of Basal Reading approach and Experiental Language Based program.
Multisensory approach.
Positive reinforcement token system.

Gen. Obj. #
SPECIALIZED MATERIALS AND EQUIPMENT (If indicated):

Scott Foresman Reading Series.
Explore the Code — Educators Publishing Code
Tape recorder: Record Player and accompanying books.
Developmental learning materials for academic areas.
Teaching Resource Materials.
Teacher made materials.

STUDENT Michael Panico
SCHOOL
DATE OF PLAN
COUNSELOR

ADDITION TO INDIVIDUAL EDUCATIONAL PLAN

PERFORMANCE LEVEL (What the student can do now):

Silvaroli Informal Reading Inventory
Word Recognition — 80%
Primer — 85% 1.2 — 75%; 2.0 — 65%
Oral Reading Accuracy
Preprimer — 83%, Primer 88%, 1.2 — 85%, 2.0 — 84%
Comprehension Primer 805;
1.2 — 90% 2.0 — 100% 3.0 — 60%
(See attached)

Gen. Obj. #
TEACHING APPROACH AND METHODOLOGY (Tied to general objectives):

Gen. Obj. #
SPECIALIZED MATERIALS AND EQUIPMENT (If indicated):

PHYSICAL EDUCATION: Can student participate in regular physical education program? _____X_____yes _____no.

If not, what adaptations have to be made or what program will be offered?

PARENT-STUDENT INSTRUCTION (if indicated). NOTE: Parent-student instruction is required for three and four year old students.

METHODS AND CRITERIA TO MONITOR STUDENT PROGRESS:

Special Summary Reports
Quarterly Reviews
Educational Plan Objectives
Parent Monthly Meetings
Ongoing assessments for progress.

FOR STUDENT PLACED IN 502.4 PROGRAM, INDICATE THE ACTIVITIES TO BE USED FOR INTEGRATION INTO A REGULAR EDUCATION PROGRAM.

Music, Art, Gym, Lunch, Recess

SUPPORT SERVICES PROVIDED DIRECTLY TO REGULAR CLASSROOM TEACHER OR SPECIAL EDUCATION PROVIDER (AND RELATIONSHIP TO OBJECTIVES:)

All special subject areas will be informed of Michael's particular learning style.

Performance Level (continued)

Social Studies — SRA "Cities" and Tapes — Grade Level
Science — Grade Level
Math — Level 3 — Grade Level
Handwriting — Continue work for neatness and form.

PIAT —
Mathematics — 3.3 Grade Level
Reading Recognition — 2.6 Grade Level
Reading Comprehension 2.5
Spelling — 2.3
General Information 4.0
Total Test 2.8 Grade Level

Bender — No visual motor problems evident
Scored age appropriate

Wepman Auditory Discrimination Test
2 errors — adequate discrimination skills

Spencer's Memory for Sentences — 8-6 month age equivalent

G-F-W — Auditory Memory Tests
Test I — Recognition Memory
Raw — 104/110; % Rank - 70% — Age Equiv. - 10.10

Test II — Memory for Content
Raw — 24/32; % Rank — 82% — Age Equiv. - 12-11

Test III Memory for Sequence
Raw 38/84; % Rank - 25% — Age Equiv. - 7-7

ITPA
Overall language Score — Age Equiv. 10.1.
Auditory vocal; visual vocal 8 yrs. 6 mo.

Subtests of the Detroit Test of Learning
Aptitude — Above Chronological Age with the exception of the Auditory Attention Span for unrelated words at 7-9

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
7:30					
8:00					
8:30	Homeroom				
9:00	Math				
9:30	Reading →	→	→	→	→
10:00	↓				
10:30	Adapted P.E.	Reading & Lang.			
11:00		Gym		Gym	
11:30	Lang →	→	→	→	Adap. P.E.
12:00					
12:30	Lunch →	→	→	→	→
1:00					
1:30	Social Studies →	→	→	Art	Home-work Activities
2:00	Behavioral Activities →	→	Science	Art	Behavioral Activities
2:30					

1. Daily duration of program 8:30-2:45
2. Actual times each week when services will be delivered Daily
3. Duration and frequency _____
4. The number of days per year that this plan will be in effect 180

[BSEA Exhibit, found at R.A. IV, p. 148.]

BURLINGTON PUBLIC SCHOOLS
BURLINGTON, MASSACHUSETTS

June 28, 1979

Mr. and Mrs. Panico
28 Fieldstone Drive
Burlington, Mass. 01803

Dear Mr. and Mrs. Panico.

Enclosed is the Educational Plan for Michael for the academic year 1979-80. I am sorry you were unable to keep the appointments arranged to view the classroom and meet with John McAleer at the Pine Glen School.

To date, Dr. Lott's evaluation from Mass General has not arrived. We were awaiting the Mass General reports before completing our Educational plan; however, we will be happy to review and include any additional objectives deemed appropriate for Michael's educational program at the Pine Glen School upon receipt of the Mass General assessments.

Please sign the enclosed plan and return to our office at your earliest convenience. If you have any questions, please feel free to call.

Sincerely,
/s/
Jean Arin
Core Evaluation
Administrator

JA:lt
Enclosures
cc: Kevin Foley

[BSEA Exhibit, found at R.A. IV, pp. 163 and 510.]

BURLINGTON PUBLIC SCHOOLS
BURLINGTON, MASSACHUSETTS

July 6, 1979

Carol Kervick
Division of Special Education
Bureau of Appeals
31 St. James Avenue
Boston, MA 02116

Re: Michael Panico

Dear Ms. Kervick,

Enclosed is the Educational Plan for Michael Panico, son of Mr. and Mrs. Robert Panico, 28 Fieldstone Dr., Burlington, Mass. telephone no. 272-7583.

The parents have rejected the Educational Plan as submitted to them.

Sincerely,
/s/
Jean Arin
Core Evaluation
Administrator

JA:lt
Enclosures
cc: Kevin Foley
Mr. and Mrs. Panico
Madeline Mooney

[BSEA Exhibit, found at R.A. IV, p. 362.]

HARVARD MEDICAL SCHOOL
PEDIATRIC NEUROLOGY UNIT
MASSACHUSETTS GENERAL HOSPITAL
BOSTON, MASS. 02114

July 10, 1979

Mr. Robert Panico
28 Fieldstone Drive
Burlington, MA 01803

Dear Mr. Panico:

I have reviewed Michael's cortical function tests and discussed his problem with Ms. Schonfeld and Dr. Eisenthal. We are all of the opinion that Michael's emotional difficulties are secondary to a rather severe learning disorder characterized by perceptual difficulties. The treatment would not seem best centered in a class for emotionally disturbed youngsters, but rather in a highly specialized setting for children with learning handicaps. The severity of Michael's deficit may require a special setting such as the Carroll School for this purpose.

Yours sincerely,
/s/
Ira T. Lott, M.D.

ITL/ljc

[BSEA Exhibit, found at R.A. IV, p. 410. The original was handwritten.]

7/19/79 File Michael Panico

Betsy Burch

Bureau Spe. Appeals

727-8534

Is there a need for [Mediation]

should go to Hearing without

Med session

[BSEA Exhibit, found at R.A. IV, p. 525.]

Robert A. Panico
28 Fieldstone Dr.
Burlington, Mass.

7/17/79

Division of Special Education
31 St. James Avenue
Boston, Mass. 02116

Gentlemen:

I am requesting a hearing relative to Case #2867 concerning my son, Michael R. Panico. Michael is a student at Memorial School, Burlington, Mass. I understand that the hearing will be scheduled within 20 days of receipt of this request.

I rejected the I.E.P. proposed for my son by the Burlington School Department and so notified them.

I spoke with Betsy Burch on 7/17/79 and a mediation session will not be held.

Very truly yours,
/s/
Robert A. Panico

[BSEA Exhibit, found at R.A. IV, p. 363.]

MEDFORD PEDIATRIC ASSOCIATES, P.C.
116 FOREST STREET
MEDFORD, MASS. 02155

July 25, 1979

To Whom It May Concern:

Re: Michael Panico
DOB: 9/7/70
28 Fieldstone Drive
Burlington, MA

Dear Sir:

I am the Pediatrician following Michael Panico. Michael has a significant learning disability with secondary emotional problems. He has perceptual problems, which are responsible for his learning disability.

He needs specialized instruction for his language disorder such as is provided at the Carroll School. His behavioral problems are secondary to his primary learning disabilities and he should not be placed in a class for emotionally handicapped children.

Sincerely,
/s/
Melvyn B. Levine, M.D.

MBL/mab

[BSEA Exhibit, found at R.A. IV, p. 527.]

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF EDUCATION —
DIVISION OF SPECIAL EDUCATION
NOTICE OF HEARING

7/30/79

TO: Parents and Local School District
FROM: Bureau of Special Education Appeals

G.L. 72B, Chapter 766 Regulations, Paragraph 401.3

IN RE: Michael Panico #2867

SCHOOL DISTRICT: Burlington Public Schools

A hearing, under Massachusetts General Laws, Chapter 71B ("Chapter 766"), has been requested regarding the above named student. The hearing has been scheduled as shown below:

DATE: August 8, 1979 (Wednesday)

TIME: 9:00

LOCATION: Center School

ADDRESS: Center Street
Burlington, Mass

If you desire to request a postponement, cancellation, or change of location of the hearing, you must follow the instructions contained in the Bureau of Special Education Appeals Statement on Postponements of Appeals Hearings. A copy of that policy has been included with this notice for your convenience.

For your reference we have enclosed a copy of The Bureau's Guide to the Appeals Process. If you have any questions about the scheduling of the hearing or about the hearing process itself, kindly call the Bureau at (617) 727-8534.

[BSEA Exhibit, found at R.A. IV, p. 364.]

HARVARD MEDICAL SCHOOL
PEDIATRIC NEUROLOGY UNIT.
MASSACHUSETTS GENERAL HOSPITAL
BOSTON, MASS. 02114

August 1, 1979

Mr. Robert Panico
28 Fieldstone Drive
Burlingham, MA 01803

Dear Mr. Panico:

This note will support our recommendation that Michael receive intensive tutorial for his learning disabilities which are severe. The history of his current school performance and the extent of disabilities revealed through cortical function testing suggests that an advanced program at an institution such as the Carroll School will be necessary. The enclosed note from Dr. Eisenthal suggests that any emotional difficulties Michael may be experiencing result from his learning disabilities rather than the converse.

Yours sincerely,
/s/
Ira T. Lott, M.D.

ITL/ljc

[BSEA Exhibit, found at R.A. IV, pp. 183-184.]

August 14, 1979

Administrative Office
Burlington Public Schools
Center School
Center Street
Burlington, Massachusetts 01803

Att: Mr. Thomas Michael
Superintendent of Schools

Re: Michael Panico

Dear Superintendent Michael:

Enclosed please find copy of a letter with enclosures of August 14, 1979 to the Bureau of Special Education Appeals. I think that the enclosures should be most useful at the mediation session set for August 17, 1979.

I especially invite your attention to:

1) "Medical Examination Summary" in which as early as June 1977, Doctor Levine indicated dyslexia. Unfortunately no special programs were instituted at the time.

2) Letters of, July 10, 1979, from Doctor Lott; July 25, 1979, from Doctor Levine; and of August 1, 1979 from Doctor Lott enclosing a report of Doctor Eisenthal.

If you have no objection, at the insistant request of the Panicos, Mrs. Kathryn Black is willing to attend the mediation session

and give what assistance she may. Inasmuch as Mrs. Black has had considerable first hand knowledge of Michael's condition, and training and experience in the field it would seem appropriate that she attend.

Permit me to say that I am looking forward to meeting you on Friday, and am sure that both as an educator and a gentleman you will use your best efforts to resolve this aggravated matter.

Very truly yours,
/s/
Gerald B. Gallagher

GBG:scm
Enclosures

[BSEA Exhibit, found at R.A. IV, p. 562.]

Division of Special Education

The Commonwealth of Massachusetts Department of Education

31 St. James Avenue, Boston, Massachusetts 02116

BSEA CASE # 2867

RECORD OF ATTENDANCE

In a mediation session held with Madeline Mooney, mediator of the Bureau of Special Education Appeals on 8/17/79 to discuss the educational program and plan for Michael Panico, the following people were present:

NAME	ADDRESS*	POSITION/TITLE
Robert A. Panico	28 Fieldstone Ave. Burlington	Father
Rosann I. Panico	" " "	Mother
Gerald B. Gallagher	77 Great Road, Acton	Attorney for Panicos
Kevin Foley	Center School, Burlington	Director of Pupil Services
Jean Arin	Center School Burlington	Core Evaluation Adm.
Kathryn Black		

[BSEA Exhibit, found at R.A. IV, p. 553.]

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF EDUCATION —
DIVISION OF SPECIAL EDUCATION
NOTICE OF HEARING

Sept. 7, 1979

TO: Parents and Local School District
FROM: Bureau of Special Education Appeals

G.L. 71B, Chapter 766 Regulations, Paragraph 401.3

IN RE: Michael Panico #2867

SCHOOL DISTRICT: Burlington Public Schools

A hearing, under Massachusetts General Laws, Chapter 71B ("Chapter 766"), has been requested regarding the above named student. The hearing has been scheduled as shown below:

DATE: Wednesday Sept. 26, 1979

TIME: 9:00 AM.

LOCATION: North Andover Public Library

ADDRESS: Main Street
North Andover, Mass

If you desire to request a postponement, cancellation, or change of location of the hearing, you must follow the instructions contained in the Bureau of Special Education Appeals Statement on Postponements of Appeals Hearings. A copy of that policy has been included with this notice for your convenience.

For your reference we have enclosed a copy of The Bureau's Guide to the Appeals Process. If you have any questions about the scheduling of the hearing or about the hearing process itself, kindly call the Bureau at (617) 727-8534.

[BSEA Exhibit, found at R.A. IV, p. 560.]

October 12, 1979

Ms. Debra Blumer, Hearing Officer
Bureau of Special Education Appeals
31 St. James Avenue
Boston, Massachusetts 02116

Re: Michael Panico
Burlington Public Schools
No. 2867

Dear Ms. Blumer:

I received a call from Attorney David Berman last evening asking to have the above-captioned matter continued from October 17 because of his engagement with a Superior Court matter. I indicated to Mr. Berman that I had no objections to this.

Mr. Berman indicated that he was free and would reserve October 30, 31, and November 1 for the Panico case. It is my opinion that this case will go more than one day and it may be fortuitous that at this time both Mr. Berman and myself are available for all three of those days.

However, a further continuance in this matter would be quite onerous on my clients, inasmuch as they will be required to pay the second half tuition at the Carroll School by a certain day in December. To do this they will be required to get a loan.

I certainly hope that all parties recognize the anxiety that the delay in this case necessarily causes the Panico family.

Very truly yours,
/s/
Gerald B. Gallagher

GBG:rip
cc: David Berman, Esq.

[BSEA Exhibit, found at R.A. IV, p. 561.]

October 15, 1979

Ms. Debra Blumer, Hearing Officer
Bureau of Special Education Appeals
31 St. James Avenue
Boston, Massachusetts 02116

Re: Michael Panico
Burlington Public Schools
No. 2867

Dear Ms. Blumer:

This is to confirm our phone conversation of October 15 and to inform Attorney David Berman of the scheduling on this case. Mr. Berman has informed me that he is available on October 30, October 31 and November 1.

It is my understanding that we are now to reconvene on October 30 at 1:00 p.m. We will also reserve a full day on October 31, and the afternoon of November 1 from 1:00 p.m. on.

Again, I reemphasize the very real personal need of the Panicos of disposing of this matter with no further delay.

Very truly yours,
/s/
Gerald B. Gallagher

GBG:rip
cc: David Berman, Esq.

[The written statement of Mr. Panico, a BSEA Exhibit, found at R.A. IV, pp. 415-425.]

My son Michael is a 9 year old boy and has completed grades K through 3 at the Memorial School in the Burlington School System. Presently Mike has a severe learning disability which has manifested itself in his school work.

Mike's learning disability was first noticed by us early in Grade 1 and brought to the attention of his teacher Beverly Reber. Ms. Reber dismissed our concern stating that Mike was just "immature."

In December 1976 at a parent-teacher conference we asked Ms. Reber if Mike could be tested to determine if he had a learning problem. Ms. Reber informed us that she did not know of any testing available for a child of Mike's age but she would look into it and get back to us. She also told us that it was too early to tell if Mike should repeat but if he didn't improve in reading she might have to recommend repeating.

In March 1977 at a parent-teacher conference we were informed by Ms. Reber that Mike was doing poorly in school and she was going to recommend repeating him. She said repeating would be best for Mike because of his immaturity which caused him to be deficient in his school work. We again asked about testing for Mike. Ms. Reber said she had looked into it but there was nothing available.

In May 1977 we had Mike tested by an experienced first grade teacher from another school system (Janet Ruggerio) who stated that it was her professional opinion that Mike had some kind of a learning disability. We told Mrs. Ruggerio about Mike's teacher stating that there was no testing. Mrs. Ruggerio told us the teacher was wrong and informed us of Chapter 766.

On or about June 1, 1977 we received a letter from the principal (Richard Barrows) at Mike's school recommending that Mike be retained in Grade 1.

On June 3, 1977 I went to speak to Mr. Barrows concerning Mike. I explained my feelings that Mike had a learning disability and the reasons why. Mr. Barrows stated that he has no learning disability but is only immature. I requested a full CORE for Mike and he said he would not give him one. He told me to take his advice and repeat Mike.

I again requested a full CORE and Mr. Barrows replied, "No, way". I then said I was demanding a full CORE for my son. He then stated that if I wanted a CORE he would "wash his hands" of Mike. I insisted on a full CORE and he told me I would have to do it myself. He gave me the name of Jean Arin and told me she was in charge of CORE's.

I requested a full CORE in writing on June 3, 1977. I also called Jean Arin who said she would set up the CORE at once. My wife went to the Burlington School Administrative Office and signed the necessary papers. On this date, we received copies of several documents. One of the documents we received was entitled "Evaluation Process-Rights of Parents. This document was one page. (During the course of my problems with the Burlington School Department I have come to learn that this document should have detailed what my rights were and what we were to expect from the full CORE).

The CORE testing was done and a CORE conference was held on June 23, 1977. As part of the CORE testing Mike was examined by Doctor Melvyn Levine who was Mike's pediatrician. He diagnosed Mike has having dyslexia.

At this conference the CORE team agreed that Mike had some form of a learning disability but no one offered anything specific. My wife and I were told that Mike would receive special help for his learning disability the following year whether he repeated grade 1 or we placed him in grade 2.

At the conclusion of this conference we were satisfied that Mike would get special help in school for his learning disability. We were not aware, nor were we informed of the requirement that an Educational Plan should have been prepared.

At this point we had made no decision as to whether or not Mike should repeat grade 1. During the summer of 1977 at our expense Mike was tutored in reading by Janet Ruggerio.

In early September 1977 prior to the commencement of school Mike was tested in reading at the Memorial School. He had shown significant improvement in reading and we placed him in the second grade. I called Mr. Barrows prior to the start of school and advised him of our decision. I asked him if Mike would get the special help as stated at the CORE and Mr. Barrows said, "Yes".

In October 1977 we went to see Mike's reading teacher Mrs. Hannon at the parent-teacher open house. After we introduced ourselves to Mrs. Hannon, her first words were, "Don't you feel you've made a mistake by putting Michael in the second grade." She then told us that Mike couldn't do second grade work. She said Mike was immature, evidenced by the fact that he didn't complete his assignments, had to ask for directions several times, had a short attention span and was fidgety.

We asked the teacher if she was aware that Mike had a learning disability and she said "No". She said she didn't see a learning disability. We asked her if she read Mike's file and the CORE results and she said "No". We asked what special help Mike was getting and she said she wasn't aware of any. We asked her to please look at Mike's file. She agreed and told us that if Mike had a CORE she would make sure he got the necessary special help.

In November 1977 at a parent-teacher conference Mrs. Hannon told us that Mike was her poorest student, unable to do the work and needed constant help. She suggested we place Mike back in Grade 1. We again told Mrs. Hannon about Mike's learning disability and asked if she had looked at Mike's folder and the CORE results. She said that she hadn't but had discussed Mike with the principal who told her that Mike was

immature and should have been repeated and that he had explained that to Mike's parents last year.

I asked Mrs. Hannon to please get Mike's school folder so we could review it together. Mrs. Hannon said she had another appointment scheduled but promised to review the folder and set up another appointment soon. (We never heard from Mrs. Hannon until we initiated a conference in February or March 1978.)

In October and November 1977 Mike began to suffer from severe headaches waking with nightmares, screaming in his sleep that his teacher said he was stupid and that she was going to send him back to kindergarten.

As a result of the above we took Mike to his pediatrician Dr. Levine. Subsequent to Mike's examination Dr. Levine told us he wanted to refer Mike to Dr. Ira Lott, a pediatric neurologist at the Massachusetts General Hospital, for his headaches and night tremor [*sic*]. He also told us that Mike had a severe learning disability.

In late December 1977 Mike was given a complete neurological examination by Dr. Lott. Dr. Lott told us that Mike had severe pediatric migraine and a rather severe learning disability. We told Dr. Lott about what had happened in the Burlington School System. He then recommended that Mike be tested at the Massachusetts General Hospital. On January 9, 1978 Michael underwent a full day of testing. During the afternoon of the testing during a break the tester told us that Mike was a very bright child but had a learning disability.

On March 2, 1978 my wife and I met with Mrs. Hannon, Mike's teacher. We told her of the Massachusetts General Hospital preliminary findings and told her of Mike's nightmares and night tremors. We asked her to please ease up on Mike and try to build him up. She adamently refused and said she certainly didn't cause his problems and couldn't waste precious time on Mike. She said Mike's headaches are an

excuse. We explained that we weren't concerned with the cause of Mike's problem at that time but rather were asking her to be a little understanding of the fact that he has been having headaches and was fearful of school and her.

Mrs. Hannon left the room and returned with Mr. Barrows. He immediately asked if we wanted Mike taken out of Mrs. Hannon's room. We explained the problem to him and he stated he had nothing in writing and until he did he wouldn't do anything. I then asked Mr. Barrows why Mike didn't get special help as was stated at the CORE meeting the previous June. Mr. Barrows stated that he wasn't aware Mike had a CORE. (Mr. Barrows sat in at the CORE meeting). Mr. Barrows then stated if the doctors diagnosed Mike as having a learning disability they are wrong. He said they see someone for a day while I see them all year. Mike hasn't got a learning disability. He is just immature.

On March 7, 1978, we met with Dr. Lott relative to Mike's cortical function test results. Dr. Lott explained the results and suggested we go to the School Department to get special help for Mike. We explained to Dr. Lott what had happened on March 2, and he said if we ran into difficulty he would help us get the necessary help for Mike.

Subsequent to this meeting I asked Burlington to reconvene the CORE. This was done on March 17, 1978. At this meeting it was agreed that Mike had a learning disability and that an educational plan would be developed and instituted calling for Mike to receive one hour tutorial, one on one with Katherine Black a reading specialist. This plan was received by us on or about April 5, 1978. It covered the period 3/23/78 to 3/23/79. The plan was implemented immediately after we signed it in early April 1978.

During the period April 1978 through June 1978 Mike seemed to improve considerably. His headaches eased and he was eager to try reading and spelling. He was more relaxed at

home and in school. The nightmares and night tremor stopped. This improvement continued during the summer of 1978. During the summer Mike received tutorial help from Mrs. Black on a regular basis, at no expense to us. Mrs. Black tutored Mike at her own expense. She informed us that if she could work with Mike over the summer it would help him maintain what had been learned.

On August 16, 1978 I met with Kevin Foley, Director of Pupil Services for Burlington. I told Mr. Foley about Mike and his problems and related the experiences that I had had during the past year and a half relative to obtaining help for Mike. I expressed my concern for other children in the school system whose parents might not have been able to afford the testing at the Massachusetts General. I also asked Mr. Foley if he would insure that Mike got the help he needed. He promised me that Mike would get the help specified in the Educational Plan. He further stated that no change would be made in Mike's Educational Plan without my consent.

In September 1978 Mike began third grade. His previous Educational Plan was still in effect.

Almost immediately Mike started becoming frustrated about school. He complained about too much work. He said he had to work with Mrs. Black (reading tutor) and then go back to his class and do the work he had missed while with Mrs. Black. To make up the additional work he was forced to miss recess, etc.

At the first CORE team meeting September 19, 1978 we brought the above problem to the attention of the CORE team. Mike's regular classroom reading teacher was not aware that Mike couldn't do regular third grade reading and that he was not supposed to be making up the work he missed while being tutored by Mrs. Black. This situation was corrected. We were told at this meeting that Mike was progressing well.

During the remainder of the third grade school year we received reports that Mike's education was going well.

In May 1979 my wife and I became concerned because Michael seemed to be regressing. He didn't want to go to school, the headaches became worse and the night tremors began to recur. We spoke to Mrs. Black who informed us:

1) that Michael was not making significant progress.
2) that Michael's educational plan had been changed early in the school year. The change reduced Michael's time alone with Mrs. Black from one hour per day to thirty minutes per day.
3) that she (Mrs. Black) spoke to the Burlington School Administration about the change and the fact that it was wrong, but received no satisfaction.
4) that in her opinion Michael was now at a point where he needed a total program which was directed solely toward learning disabilities.

In mid-May we requested that Michael be retested under 766 so that we could see where Mike stood.

On May 18, 1979 we met for a quarterly CORE meeting. Several of Mike's test results were discussed. Two of the team members, Ms. Meade and Ms. Mason were concerned with Mike's ability to remember. They both diagnosed that Mike had a memory problem that interfered with his learning. No decision as to the education of Mike was made or discussed by the TEAM.

Subsequent to this meeting I and my wife discussed Michael's problems with Ms. Meade and Ms. Mason. These discussions were in the presence of both Ms. Meade and Ms. Mason and also alone with Ms. Meade and Ms. Mason.

During these discussions either Ms. Meade or Ms. Mason and we can't remember which told us:

1) that we should look into a private school which specializes in learning disabilities because Burlington hasn't been able to help Mike. Several schools were mentioned including the CARROLL and LANDMARK Schools.
2) that Michael's educational plan has been changed without our consent.

In late May 1979 Jean Arin called me to set up an appointment to meet with her and the school psychologist on May 25, 1979 at the Center School.

On May 25 my wife and I met with Jean Arin and Richard Cavanaugh. Mr. Cavanaugh gave us the results of his testing of Michael. Mr. Cavanaugh told us that Mike was extremely depressed and anxious and had severe emotional problems and because of this he couldn't learn. I asked Cavanaugh if the emotional problems were the cause or the result of Mike's learning problem and he stated that they were the cause.

During this meeting Ms. Arin said that because Mike had such severe emotional problems Mike's educational plan would call for him to be placed in a class for emotional children at the Pine Glen School. She told us that this class was run by John McAleer and that he was a superb teacher who was trained in this field. She said he worked wonders with children with emotional problems by building up their egos.

I asked about special help for Mike's reading problems and she said McAleer would handle this but once Mike overcame the emotional problems he wouldn't need special help in reading. She explained that because of his anxiety he couldn't learn.

At this meeting Jean Arin stated as follows:

The Memorial School wasn't for Michael. Michael has what we call the "Memorial School Syndrome." Barrows' is only interested in the achievers. I wanted to get Mike out of there before, but couldn't without a reason. Now with Mr. Cavanaugh's report I can get him in another school.

Cavanaugh left for another appointment and we continued our discussion. Mrs. Arin spoke at great length about John McAleer and what a great job he does with kids with problems. She suggested that we bring Mike to McAleer's class the following week so we and Mike could meet McAleer and get to know him before Mike starts there next year.

At this time I told Mrs. Arin that I was extremely concerned about Mike, based on Cavanaugh's report and that I wanted other opinions, since this emotional problem was so serious. I told Ms. Arin that I wanted additional testing done on Mike and I wanted it coordinated by Dr. Lott.

On May 29, 1979 Mike was examined by Dr. Lott and Dr. Lott was shown the school's psychological report. Dr. Lott stated that he thought the school psychologist was in error. He said that any depressions Mike might be having was a result and not the cause of a learning disability, and that Mike should not be put in a class for emotional children. Dr. Lott referred Mike for additional psychological testing to Sherman Eisenthall and forwarded Mike's tests, etc., to Gida Schonseld [*sic*] at the Learning Disorders Unit of the Massachusetts General Hospital.

Subsequent to this Dr. Lott recommended that Mike be placed in a school specializing in learning disabilities.

On June 4, 1979 a full CORE team meeting was held. At this team Mr. McAleer was present. Jean Arin stated that Mike was going to be placed in John McAleer's class at the Pine Glen School based on the school psychologist's report. There was no input by any team member relative to Mike's I.E.P. The decision had been made prior to the team meeting based on the psychologist's report. On this date I informed Ms. Arin that I was going to reject this educational plan until such time as I could get an opinion from Dr. Lott and Dr. Eisenthal as to the suitability of placing Mike in a class for emotional children.

On June 15, 1979 I called Jean Arin's office because I had not received an educational plan. I told her secretary I was going away for a week, but my wife would be home. Please send the educational plan so we could show it to Dr. Lott and decide what to do.

On June 27, 1979 I again called Jean Arin's office. I demanded the educational plan and told them it was late and I had to have it because I did not agree with their placement and wanted a hearing.

Jean Arin called me and said she was sorry the educational plan was late but it would be ready tomorrow. I told Arin what Dr. Lott and Eisenthall had stated, secondary emotional problems resulting from a learning disability, and this certainly didn't call for placing Mike in a class for emotional children, but rather placing Mike in a program directed toward a learning disability. I also told Ms. Arin that Mrs. Black, Mike's learning disability teacher from Burlington, also stated that Mike needed help for a learning disability and felt that placing Mike in McAleer's class would be detrimental to Mike. Ms. Arin said that she didn't agree with Mrs. Black or the doctors and would prepare the educational plan calling for Mike to be placed in McAleer's class.

On June 28, 1979 my wife picked up the educational plan from Ms. Arin. After a thorough review of the educational plan I rejected it on July 3, 1979.

On July 17, 1979 I contacted Betsy Burch, Bureau of Special Appeals to get a date for mediation. She told me she would call the Burlington School Department for a date. She called me back and told me Burlington didn't want to mediate and that I should request a hearing which I did that day.

On several occasions during the end of July and early into August I attempted to meet with Mr. Michael, Superintendent of Schools to try and correct the problems, but never was able to. Mr. Michael was too busy on three different days but finally agreed to meet with me subsequent to my retaining counsel.

During the period covering September 1976 to September 1979 Mike went through an ordeal no young child should ever have to go through.

In first grade (76-77) he was categorized as immature and not trying. His teacher and principal refused to even consider the fact that he might have a learning disability. School became a chore and he considered himself a failure. In grade 2 (77-78) he was categorized as a poor student, immature, not trying and a non-achiever. Although a learning disability was diagnosed and a full CORE was held in June 1977, he received no help. In fact, he was put under more pressure at school. He developed severe headaches, a fear of school, nightmares and night tremor. He began to develop emotional problems questioning his self worth. When problems were brought to the attention of his teacher and principal, they refused to help.

Finally after Mike was diagnosed as learning disabled by the Massachusetts General Hospital, an attempt was made to help him. An educational plan was developed on 3/23/78. For the remainder of the second grade Mike made good progress. His headaches diminished and his night tremor ended.

In the third grade Mike again began to develop more emotional problems. His night tremor returned. It must be noted that it was early in third grade when Mike's educational plan was reduced without parental knowledge or consent.

At the end of third grade an educational plan was recommended for Mike which would place him in a class for emotional children at the Pine Glen School. Mike knows the Pine Glen School as the school for "retards". He became scared and apprehensive when told in June that he might have to go to the Pine Glen School. He asked if he was retarded. He cried and pleaded with us not to send him there. He said the kids called him "wierdo" when he told them he might go there. He said he would run out of school and run away if he had to go to Pine Glen.

Almost on a daily basis during the summer he reiterated, "Where am I going to school?" "I'll go anywhere else but not Pine Glen." "You don't love me or you wouldn't make me go there."

The thought of where he was going to school dominated his thoughts day and night. He would awake from sleep crying and shaking and ask, where he was going to school.

Nothing that I or my wife said could allay his fears or ease his mind. Finally in mid-August 1979 my wife and I decided that we could not see our son hurt any longer and we made the decision to send him to the Carroll School, Lincoln, Massachusetts. We told Mike that he didn't have to go Pine Glen but would go to the Carroll School. Almost immediately the night tremor ceased. Mike relaxed somewhat and his headaches eased. After about a week he actually started looking forward to going to school and being helped in reading.

On September 7, 1979 Mike started at the Carroll School. Although he has only been there for about two weeks we can see a significant change in Mike. He comes home from school happy and excited. He talks about school and what he did during the day.

During this entire experience it must be noted that not only did Mike suffer but so did his family. His brother and sister felt guilty because they were excelling in school. We hurt each time our son hurt as only parents can. We expended funds which we didn't have because we saw our son being torn apart because an educational system broke down and the law was ignored.

In conclusion we must ask how all this happend and why.

/s/ Robert A. Panico
/s/ Rosann S. Panico

[Transcript of a portion of the administrative hearing held on September 26, 1979 before a Hearing Officer of the Bureau of Special Education Appeals of the Department of Education, Commonwealth of Massachusetts. The transcript includes a portion of the testimony of Mr. Robert Panico, the father of the child, a witness called by the parents, found in the Record Appendix, Volume III, pages 9-71. The complete transcript was offered as Plaintiffs' Exhibit 1 at the District Court Trial on May 14, 1982 at Tr. 2-37 (R.A. II, pp. 2-37.]

[9] TESTIMONY OF ROBERT PANICO

DIRECT EXAMINATION BY MR. GALLAGHER:

Q. Would you please state your name for the court?

A. Robert A. Panico.

Q. And where do you reside Mr. Panico?

A. 28 Fieldstone Drive, Burlington, Massachusetts.

Q. And how many children do you have?

A. I have three children, a daughter Jodeen who is 11, a son Michael who is 9, and a son Stephen who is 7.

Q. And where do you work?

A. I work for the Treasury Department as a supervisory criminal investigator.

Q. Is that in Boston?

A. Yes it is.

Q. And do you get home every evening practically?

A. Yes I do.

Q. So you are a full-time father?

A. Yes.

Q. Now I invite your attention to the Fall of 1976 when Michael was in the first grade and completed kindergarten.

A. Yes.

Q. In your documentation on page 43 you show his kindergarten report?

A. Yes I do.

Q. And does that kindergarten report indicate that he has difficulty putting concepts on paper?

A. Yes the kindergarten report entitled Exhibit 243 [*sic*] states "he seems to have some difficulty applying these concepts [10] to his paper work and completes work best if he is closely supervised. Learning to, reading to understand him verbally but having difficulty on paper — seeming to understand him verbally but having difficulty on paper.

Q. Now did you notice when he went into the first grade did you first notice reading difficulties in the Fall of 1976 yourself?

A. Yes we did.

Q. And in December of 1976 did you have a conversation with his first grade teacher Mrs. Reba [*sic*]?

A. Yes.

Q. And would you please tell the Hearing Officer what the gist of that conversation was?

A. Yes, in December 1976 my wife and I met with Michael's first grade teacher Mrs. Reba. At that time she told us that Michael was doing poorly in reading and that if he didn't improve significantly we might have to think about detaining him. At that point we talked further with Mrs. Reba and we told her our feelings that Michael might have a learning problem. We told her what we had noticed earlier with regard to colors, not being able to remember them, not being able to remember numbers or the alphabet and we asked her if there was testing available we were very concerned about Michael, was there testing available so that we could determine if Michael had a reading disability. Mrs. Reba told us that Michael was [11] immature that was the only cause of his problem. We asked her again if there was testing available for Michael and she said there was none that she knew of but she would look into it.

Q. Now inviting your attention to March of 1977 did you have another conversation with Mrs. Reba?

A. Yes we did. Again.

Q. Did you at that time inquire about tests availability to determine if there was a reading disability?

A. Yes in March 77 we initiated a conference with Mrs. Reba and at that time she told us that her recommendation was going to be that Michael be retained. She told us he was doing very poorly in reading and that as the reading became harder Michael did worse. We expressed our concern again as to Michael's problem and she told us it was strictly immaturity, Michael was a late month child and it was very common among late month children to have trouble in school. We asked if he could be tested even at our expense did she know of any testing that we could have for Michael to determine if he had a learning disability. She told us there was none for a child of his age. She told us she would look into it and there was none for a child of his age.

Q. Now do you have a relative by the name of Janet Ruggiero?

A. Yes. I do.

[12] Q. And how is Janet Ruggiero related to you?

A. She is a cousin by marriage.

Q. Do you know what her profession is?

A. Presently she is a mother and housewife. At the time in May at this point in time in 1977 she was a first grade teacher in the Chelsea School Systems.

Q. Did you at some time ask her to do some reading tests with Michael or examine his reading skills?

A. Yes in May 1977 we talked with her and explained Michael's situation, potential for retention, etc. and we asked her if she would spend time with Michael, examine him as a teacher and give us her opinion as to (1) whether or not Michael should repeat, how she saw Michael, how he was doing etc.

Q. And did you, did she at that time inform you about 766? About Chapter 766?

A. Well we asked her to test him. She did come and test Michael. At the time she tested him she spent about four hours with Michael alone, she covered material that was age equivalent and month equivalent to the first grade for Michael and after the testing we had a long discussion with her about what she had found with Michael during that testing.

Q. And what did she disclose that she had found?

A. She said it was her opinion that Michael displayed several of the characteristics that she had seen in the past of her experience relating to either a learning [13] disability or a problem with Michael's eyes possibly. She said she found Michael to be extremely eager, intelligent, but had an inordinate amount of problems with reading and with language type work. She suggested that we have Michael tested, his eyes tested, and that we have Michael tested for a learning disability. We told her what happened in Burlington, the teacher said there was no such testing, and she informed us about Chapter 766 and suggested that we request a full core for Michael.

Q. Now did you have his eyes tested?

A. Yes we did on two separate occasions.

Q. And did you have any problem, did the test reveal any problems in his eyes?

A. Michael's eyesight was to the best of my recollection better than 20/20 in each eye.

Q. Now did you obtain recently on September 17 a * * *[1] statement from Janet Ruggiero?

A. Yes I did.

Q. And that is your document P-1?

A. That is correct.

[1 Asterisks appearing passim in this transcript indicate portions of questions and answers that were apparently unintelligible and therefore not reproduced by the stenographer.]

Q. All right. On May 31st, on or about May 31st did you receive a letter from the Burlington School System referring to an education plan?

A. Yes we did.

Q. And that's your document P-2?

A. That is correct.

[14] Q. Now, prior to this plan were you given a notification from the Burlington Schools as a right to have a full core?

A. We, prior to the plan we knew nothing, there was no core, we were never told about a core, we were never told about testing.

Q. Does that plan make any provision for your refusing the plan that they suggested?

A. Yes it did. No well, it gave me a chance to accept it only it didn't have anything about refusing it.

Q. It suggested you could comment on it.

A. That is correct.

Q. Do you know of any assessments that were made in preparation of that plan?

A. There were none.

Q. There was no meeting prior to this plan being presented to you?

A. There was no meeting whatever.

Q. Allright. Does that plan recommend or inform you that there will be counselling provided for Michael?

A. Yes. The educational plan called for counselling for Michael.

HEARING OFFICER: Excuse me. May I ask you to clarify which document —

MR. GALLAGHER: That's P-2. Essentially this P-2 which is actually two pages here, an undated covering letter and an enclosed letter dated May 31st [15] essentially states that they wish to retain Michael in the first grade. Yes. Essentially P-2 which is a two page document, an undated covering

letter complete with an enclosure dated May 31st suggests that Michael was to be retained in the first grade.

THE WITNESS: That is correct.

Q. Does this education plan dated May 31, 1977 have any provision in there for academic work or plans for the following year?

A. It showed nothing, the educational plan called for nothing more than accepting that he be retained. There was nothing in there about his educational plan whatever.

Q. And it just provided for counsel in small in groups?

A. That is correct.

Q. On June 3, 1977 did you have a conference —

MR. GALLAGHER: We offered this before by mailing it in, I'm just inviting the Hearing Officer's attention to it.

MR. BERMAN: I want to make sure I understand the procedure. I understood that only those writings that were specifically made Exhibits would be considered. Does the Hearing Officer consider the previous admissions of both the School Committee and the parents to be already exhibits or does the Hearing Officer consider that they now have to be separately offered.

[16] HEARING OFFICER: No. Not separately offered. I've already within the record indicated that these have been submitted as exhibits and —

MR. BERMAN: They are, they are * * * the tapes right now.

HEARING OFFICER: There has not been any objection to their admission, if you want to —

MR. BERMAN: No, no I do not.

HEARING OFFICER: — question whether they should be submitted or not —

MR. BERMAN: No, I do not, I have no objection to any of that * * *. What I am going to suggest is this, if these are already in evidence, it's fine with me if they are, I just want to

know this, but I — If these are already in evidence I think some time can be saved by not asking questions concerning matters the Hearing Officer can plainly see for herself as to what a page that is already an exhibit says or doesn't say. That seems to me to be a matter of argument rather than for evidence.

HEARING OFFICER: I would, there are a couple of points (1) in the interest of informality in this kind of hearing if you would prefer that Mr. Panico testify as to his own * * * conception of what occurred during that time period directly without changing the format of the latitude that [17] * * * you don't need to do it if you don't want to.

MR. GALLAGHER: I don't have to do it.

HEARING OFFICER: You don't have to do it if you don't want to. Mr. Panico can essentially testify in paragraph form * * *. And either way you do it however if you feel comfortable doing it in a formal way then fine I'll accept that. And you might be able to pinpoint those areas that you would like to emphasize or if there are specific questions you think that have been omitted for some reason or other * * * I'll allow that. I would agree that there really isn't any need to testify as to the contents of the documents because as I've said I've already read most of them and will reread them as well so if there are things that you want to emphasize that are in the documents then that's fine and that would be helpful to me. As far as the relevance of the testimony that's just been given I assume that the point you are trying to make is that from Mr. Panico's conception might not have been adequately informed of the existence of procedures under Chapter 766 in the early part of Michael's school experience.

MR. GALLAGHER: That's correct.

HEARING OFFICER: O.K. I would accept that as being you know, relevant to the discussion and would allow it.

[18] Q. Now on your document P-3 are these notes of a conversation you had with Mr. Barrows on June 3, 1977?

A. Yes they are.

Q. Is it customary, do you frequently make notes of conversations which you consider important?

A. Yes I do.

Q. And when were these notes made?

A. They were made about 15 minutes after I met with Mr. Barrows. I went home and made the memorandum of contact.

Q. All right. Now regarding this conversation with Mr. Barrows would you, and spell out, what took place at that occasion.

A. Yes, I went to see Mr. Barrows relative to the proposed educational plan that I had received for Michael. I went to see Mr. Barrows at his office in the Memorial School relative to the proposed Ed. plan we received for Michael Panico which called for retention and which called for counselling. We discussed Mike in great length. Mr. Barrows stated that Mike should repeat. Mike was very immature and he's found through his experience that children born late in the year all on most occasions have problems in school and actually the whole school system is wrong they shouldn't start a child at that age, etc, etc., Mike should be repeated and that would be the best thing for him. I expressed to Mr. Barrows that Michael wasn't strictly a [19] chronological age problem but more a learning problem. I told him of my having Mike examined by two teachers and they felt that he had a learning problem and I told him I would like a full core. Mr. Barrows stated that Mike had no learning disability and that his only problem was immaturity and he told me to take his advice and repeat Mike. Again I asked Mr. Barrows for a full core and he told me no way. Those were his exact words. I then told him I was demanding a full core for my son and he told me that if I wanted a core and demanded it he would wash his hands of my son. He then told me if I wanted the core I would have to do it myself and I told him I didn't know how and he said "Here" and he gave me a piece of paper which is attached to my memorandum,

from the desk of Dick Barrows, and he put a name on it Jean Aarons [*sic*] and a telephone number and he told me she was the person to get in touch with if I wanted a core and he reiterated once I went to Jean Aarons "don't come back to me about Michael."

Q. Now that is your document P-4 of this notation from Mr. Barrow [*sic*]? —

A. P-3 is the document from Mr. Barrow and attachment to it. The third page of P-3 is the note from Mr. Barrow plus a note that I wrote on the same day saying that I received it.

Q. So the top part of that paper is in Mr. Barrow's hand writing?

A. That is correct he wrote it in front of me.

[20] Q. On June 3rd did you also write a letter to the Superintendent of Schools requesting a core?

A. Yes I did.

Q. And that's document P-4?

A. That is correct.

Q. Now on June 3rd did you also receive certain documents from Jean Aarons regarding or your wife receive certain documents regarding the core?

A. On June 3rd after talking to Mr. Barrow I prepared a letter and I called the Superintendent and I called Jean Aaron, the number I received from Mr. Barrow. Jean Aaron told us yes, no problem. In fact we told her that thing, we'd like it done before the end of the year and she was very cooperative and to the point where she even asked if we could come up that day, she'd have the papers, we could sign them and start the thing right away so we could have it done before the end of the year. And my wife went up to the school, to the office of Jean Aaron and met with her and signed the appropriate papers and then we received a package which was our copies and the necessary, and we thought was the necessary information that we were supposed to receive at that time.

Q. And the documents that you received at that time are incorporated here as P-5.

A. Yes, this is everything that we received that day that my wife received from Jean Aaron.

[21] Q. And at the time were you informed of your rights to have an independent evaluation?

A. No we were not.

Q. All right. And did you have any explanation at that time of your due process rights in this matter?

A. There was none. We were just told, my wife was told and I was told because I talked to Jean Aaron on the phone what the full core was, that Michael would be tested and we would find out whats wrong and if there was a problem they would be able to help him and etc., etc. In fact I talked to Jean Aaron subsequent to my wife going up there in the afternoon and she had seen my boy and she told me that from what she had seen that if he did have a problem it was nothing to worry about that he was a healthy happy little boy and all and when I went home this was the package that we had the five page packet that we received from the school.

Q. Now on June 23rd did you have in fact a core meeting?

A. Yes we did.

Q. And would you state who the parties were that were present?

A. O.K. According to my best recollection on June 23, 1977 the parties were Beverly Reba who was Michael's first grade teacher, Elsa Glickman, I believe, who did the home assessment, Becky Silverstein, who was held to be a reading specialist, Myra Fornier [*sic*], held to be a school counsellor, Dick Cavanaugh who was the school [22] psychologist, Jean Aaron, the core Administrator and myself and my wife.

Q. And did you present the document P-7 which is the medical examination by a Dr. Melvin Levine?

A. That was presented, I believe it was presented to Jean Aaron prior to that date. It was given to her a few days in advance.

MR. GALLAGHER: I would just like to call the Hearing Examiner's attention to page 2 of that document in which the doctor expressed the opinion that there was dyslexia and recommended advancement to the next grade with learning disability teaching regarding dyslectic problems. And the other documents regarding this first core are on P-8. A letter P-6. P-7 Levin's report, we just mentioned that. A document by Mr. Cavanaugh P-9 and in regard to Cavanaugh's document P-9 I would like to invite the Examiner's attention to paragraph 6.1 in which Mr. Cavanaugh points out that Mike was not emotionally disturbed and emotional injuries in and of themselves should not significantly affect his academic performance. And document P-10 which is a home assessment.

Q. Now I would like you to summarize what the conclusion of this meeting was as you understood it.

A. The meeting involved discussions of my son by several people as they saw. There was no question in my mind following these discussions that we found that Michael, [23] and I say we because I considered myself at that time part of the group, we found my son Michael to have a learning disability. The specifics were not really defined as to what was his learning disability. I questioned Dr. Levine's statement of dyslexia and was informed by Jean Aaron that dyslexia covers a myriad of things and it more or less covers learning disabilities. To say that Michael has dyslexia and then try to pinpoint what to do to help him isn't really too fair. It was kind of decided or talked about that Michael might have had a hearing problem growing up because of ear infections and maybe Michael learned to function without listening. Myra Fornier made a recommendation that Mike probably had to be taught visually, etc. and in conclusion it was decided that Michael would be taught in a special way and would get special help in his reading which would be appropriate for him. He would be taught a little bit differently then everyone else and he would be

taught by someone in a method other than in his own classroom. He would be taught to read differently than other children would be taught to read as a result of what was found. The specifics of how it would be done were not discussed but I left there feeling very content that Michael was going to be helped.

Q. Did you receive a written decision from the core meeting?

[24] A. As to the results of the core meeting nothing.

Q. Did you receive an education plan?

A. Never.

Q. During the summer did you have Michael tutored privately?

A. Yes I did.

Q. And was that by Janet Ruggiero?

A. Yes it was.

Q. And regarding holding Michael back to the first grade did you defer your decision on that till the Fall?

A. Yes we did because we wanted to wait for the results from Janet Ruggiero as to her tutoring with Michael and what kind of progress Michael made.

Q. Now on September 6, 1977 did you make a phone call to Jean Aarons?

A. No I didn't but my wife did.

Q. And you have document P-12 in here?

A. Yes I do.

Q. O.K. And at that time it was expressed that you wanted the boy to go on to the second grade?

A. That is correct.

Q. And do you understand the notation at the bottom of the page that says call to Dick Barrows no special services in grade two.

A. All I can say is I have no idea of what or who made the notation or what it meant. I was certainly led to believe and

the reason we called Jean Aaron. Jean Aaron at the time had told us that Michael would be [25] getting help, she was going to handle it. The only thing we were asked by them to do was the plan would be dependent on what grade he was in. He would get the same special help and the only difference might be the placement and we were asked when we were ready to send him back to school after this tutoring to get in touch with her so she could make the appropriate arrangements to have him get the special help depending on which grade he went in and inform his teacher of his special help and his special need. That's why Jean Aaron was called.

Q. Then on September 7 is the letter over signature of your wife effectively asking that the boy go on to the second grade.

A. Yes that is correct.

Q. In fact were any special services provided for your boy in grade two?

A. Originally no, and subsequently to a reconvening of the core in March of the following year they were but at the beginning of grade two nothing was provided for my son.

Q. Were you informed that no special services were to be provided in grade two?

A. We were never informed of this prior to grade two or at the time he commenced second grade we were never informed of this, no.

Q. Did you make a phone call to Mr. Barrow sometime in September of 1977?

[26] A. Yes. Prior to the start of school I called Mr. Barrow at his home just to let him know that Michael was going to the second grade and also to get his assurances because he was the principal of the school that Michael would be getting the special help that we had talked about the previous year at the core meeting. And Mr. Barrows told me that Mike would be getting that special help.

Q. Do you have any notes of that conversation?

A. No I don't have any notes of that.

Q. All right. Now in October of 1977 did you visit with his reading teacher, Mrs. Hannon?

A. Yes we did.

Q. I wish you would summarize the conversation you had with Mrs. Hannon.

A. O.K. We met with Mrs. Hannon in October. It was an open house parent/teachers type thing in the evening. When we went in to Mrs. Hannon we introduced ourselves. I introduced my wife and I and the very first words out of her mouth were to the effect don't you feel you've made a mistake in not repeating Michael.

Q. Now did you inquire about the learning disability?

A. Yes we then discussed what she meant. We told her about the previous core, we told her Michael had a learning disability and we asked what was being done, what about it. She said she did not know anything about it. She was not aware of a learning disability, she was not aware that there was a core, or anything else. I asked her if she had read Mike's file. She [27] said no, she doesn't read kids files she liked to make up her own opinion of the child. She likes to form her own opinion she doesn't like to make predetermined judgments about a child. So I asked her if she would please look at his file he was supposed to be getting special help. And she said she would and if there was a core and he should be getting help she would insure that he got the help.

Q. In November did you again have a parent/teacher conference with Mrs. Hannon?

A. Yes we did. In November at a regular parent/teacher conference we again spoke to Mrs. Hannon. At this time she told us that Michael was her poorest student, he was unable to do the work, he needed constant help and she suggested that we put Michael back in the first grade at that time. We told Mrs. Hannon again about Michael's learning disability and asked her if she had looked at his folder and what was

being done. She told us that she would look at the folder and she said she hadn't but she said she had talked to Mr. Barrows about Michael and she said that Mr. Barrows had told you last year that Michael should have been repeated. He told me he told you people that last year because he was immature and he should have been repeated and no he wasn't getting any special help.

Q. Now would you please explain how Michael was reacting [28] during October and November of 1977?

A. Sometime in late Fall 1977 Michael started to develop severe, severe headaches, vomiting, constant pounding that he wouldn't go out and play, he would throw up in the afternoon, at night, in complete agony. Also he started developing, right terminology I think is night trauma, he was waking with nightmares, screaming. His eyes would open but we couldn't get through to him. He would be screaming and shaking. He would be telling us that the teacher was calling him stupid. That the people were out to get him. That the teacher was out to get him, she was gonna get me, she was gonna put me back in kindergarten. This would go on for fifteen to twenty minutes with no way of waking him up, crying and shaking. It started within a two week period of getting brutal. We now no longer thought of them as being an ordinary nightmare. The boy was distraught, the headaches were severe, it was pathetic. That's the only way I can state it.

Q. Now with that in mind did Dr. Levine recommend that you take him to see a Dr. Lott at the Massachusetts General Hospital?

A. Well because of the headaches and mainly because of the nightmare and the screaming we got very concerned and we took him to Dr. Levine his pediatrician for an examination first. Dr. Levine examined Michael in great length, he put it at the end of the day [29] because he wanted a lot of time with Michael and we spent several hours with Dr. Levine who

who examined Michael neurologically as best he could physically, talked to Michael, tested Michael and sat with us. At the conclusion of this examination Dr. Levine told us that it was his opinion that Michael had pediatric migraine in that he had a severe learning disability. From what he could determine through his testing he had a severe learning disability and he told us that he would like to refer us to Dr. Ira Lott [*sic*] at the MGH Pediatric Neurology Unit to be certain that there was nothing neurologically wrong with Michael that there was no maybe tumors involved or nothing on his brain or nothing that could be causing his nightmares or the sudden change in Michael or anything else and also for treatment of the pediatric migraine if in fact that's what it was, and also that Dr. Lot if everything was ok other than if the physical were nothing more, for instance there were no other neurological disfunctions, then Dr. Lot could also test him for a learning disability.

Q. And did you take him in to see Dr. Lot?

A. Yes we did. We made an appointment with Dr. Lot and we took him in to see him.

Q. And what was — about when was it you took him to see Dr. Lot?

A. It was December, 1977. I think it might have been [30] December 19 but I'd have to look at the documents. But it was December 1977 that we took him to Dr. Lot.

Q. And what did Dr. Lot tell you at that time?

A. At that time after a complete neurological and I have to bring that up because Michael went through brain waves and everything, Dr. Lot told us that Michael had severe pediatric migraine. He also told us during his neurological that Michael had a severe learning disability which had to be treated.

Q. And did you tell Jean Aaron regarding that?

Q. Yes, subsequent to the conversation with Dr. Lot I did call her to tell her that we had had him there to Dr. Lot, that

Dr. Lot found a severe learning disability and that he was going to be tested at the Mass. General for it. By the way Dr. Lot had referred, told us that he wanted Michael tested at the Clinical Function Testing Lab at the Massachusetts General Hospital to determine whether or not or what his disability was.

Q. All right. And there is a note on page 35 of the School's documents corroborating this telephone call from you to Jean Aaron?

A. In December?

Q. Yes. In December 1977.

A. Yes there is.

Q. Now in January or February did you have additional tests done at the Massachusetts General Hospital?

A. In January, early January Michael was tested at the [31] Clinical Function Testing Unit at the Massachusetts General Hospital for a learning disability.

Q. And the results of these are incorporated at 15 and 16 in your parents documents?

A. Well document 15 the letter from Dr. Lot to Dr. Melvin Levine Michael's pediatrician more or less summarizes what took place during the testing yes, and his findings relative to Michael. Document P-16 is the results from the Massachusetts General, the clinical laboratory testing results.

Q. Now there is a difference in dates in these, there is quite a difference in dates, is that the time of the blizzard?

A. You mean between the time of the testing and the time of the results?

Q. That's correct.

A. Yes sir. In fact when we called about the results we were told that the delay was because of the blizzard and the people fell behind and couldn't get to his report.

Q. Now did you pay for these tests at the MGH?

A. Yes I did.

Q. On March 2nd did you have another meeting with Mrs. Hannon?

A. Yes. On March 2 as a result of general conversation I had with Dr. Lot when I had asked about the, I had called him on the phone and asked him where the results were, when we would get them, etc. and he told me [32] preliminary results were severe learning disability etc. My wife and I then went to meet Mrs. Hannon on March 2nd for the purpose of asking her to ease up on Michael that he had a now diagnosed severe learning disability. We told her about the nightmares, we told her about his fear, we told her that my son stated that she was calling him stupid and had on several occasions she threatened to put him back to kindergarten and we explained to her that we certainly, and I think my words to her were I certainly find it hard to believe that you ever said that to Michael but it, you know, anything was within the realm of possibility, my feeling is that Michael just perceives this and because he perceives this whether it happened or not its a problem and could you please just try to give him some reassurance and try to build him up so that school wouldn't become such a chore and he wouldn't be so scared and maybe help his headaches. Her remarks were that his headaches were an excuse, she never called him stupid etc. and then she just refused to talk to us and left and came back with the principal Mr. Barrows. Now when Mr. Barrows came into the room about five minutes later with Mrs. Hannon very sarcastically he asked us if we would like, what do you want do you want Michael taken out of her room and put somewhere else, where do you want him placed? We told him [33] thats not the reason we were there. The last thing we wanted was Mike to be removed from her classroom at this time, we didn't want any more pressure on him this would single him out even more. What we wanted was just if they would be understanding and ease up on Michael. And the answer was that they couldn't that Dick Barrows told us that he had nothing in writing and until he did he would do nothing for Michael. He also told us that if the

doctors found a learning disability at Massachusetts General Hospital they are wrong. His exact words were "What do they know". He said that they have a child for one day and they make all kinds of decisions, we're experts we have them here all year but the doctors know more than us. * * * you * * * doesn't know what he's doing. Which kind of shocked us. We realized we were getting no where and that was pretty much the end of the meeting at that point.

Q. Well did you tell him about the doctor's results that there was dyslexia and learning disability as diagnosed at the Massachusetts General Hospital?

A. We did and he remarked that he had nothing in writing and if the doctors diagnosed that they didn't know what they were doing.

Q. Did he make any comments about the core that had taken place the previous year?

A. Oh yes, I had asked him, you know I asked him why he [34] wasn't getting the help from the core and Mr. Barrows told us he wasn't aware there ever was a core.

Q. And was Mr. Barrows at the core?

A. He sure was.

Q. On March 3d, 1978 did you make a phone call to Jean Aarons regarding the meeting that you had on the 2nd with Mr. Barrows and Mrs. Hannon?

Q. I believe I did. Yes, I not only believe, I did make a call the day after the thing to Jean Aarons to, maybe because at that time I was so distraught, to ask her and explain to her what happened with my meeting with Hannon and Mr. Barrows. I just couldn't believe it had all happened and the attitude of the teachers that no one seemed to care and no one for some reason we had gone against the system and we didn't repeat him and that was that. I asked her what could be done and again Mrs. Aarons at this point was extremely helpful she told me about reconvening the core which then I asked for her to do

and I told her we would get the results from Dr. Lot and she suggested we reconvene the core subsequent to that I think it was maybe within a couple of weeks.

Q. And this document 13 which you obtained your P-13 which you obtained from School Department records corroborates in some respect this conversation between you and Mrs. Aaron?

MR. BERMAN: Objection. * * *.

[35] HEARING OFFICER: I'm sorry, could you repeat the question as far as * * *. We're just trying to locate them.

Q. The document P-13, marked P-13, which you have obtained from the school Department records, corroborates with some respect the telephone conversation between you and Jean Aaron?

A. * * *.

HEARING OFFICER: * * *.

MR. BERMAN: * * *. Perhaps if you could tell us what P-13 is. I do not have * * * here to corroborate.

HEARING OFFICER: O.K. Why don't you read the response that —

MR. GALLAGHER: What I don't understand is what P-13 is.

A. The document P-13 which I obtained from Mrs. Aaron on the, relative to when we requested records on Michael from the special education program heads up TC from Mr. Panico 3/3/78 which certainly it seems a telephone call from Mr. Panico — Bob, who is me. Severe migraine headaches, medication seems to have helped. MGH learning disability, Dr. Lot. Very—

MR. GALLAGHER: I don't * * * —.

THE WITNESS: O.K.

A. It corroborates in full or at least it states that I made a telephone call to Jean Aaron and internally in the document, the document reiterates many of the statements that I made or

that I had heard from Mr. [36] Barrows and had written down on a sheet of paper.

HEARING OFFICER: O.K. So essentially your point is that you are in agreement with these notes made by Jean Aaron of a telephone conversation that you had with her on that date?

THE WITNESS: Yes.

Q. All right. Now, at about this time were arrangements made to implement the counselling which had been spelled out in May of 1977?

A. Not at this point in time. That didn't come until subsequent to the reconvening of the core which was on I believe March 20th or March 17th. At the meeting at the time of my conversation on March 3rd there was no mention of the counselling at that time.

Q. In drawing your attention to document P-14 —

A. Yes I have it its an undated document.

Q. Do you know what that document is or where did you obtain it?

A. It was obtained from the special education folder of Michael Panico.

Q. Do you know what it reflects?

A. I do since this morning when Jean Aaron detailed what it reflected.

Q. And what is your understanding what that is?

A. Its * * *.

HEARING OFFICER: Is there any disagreement with respect to the School as to what that document is because its labeled * * *.

[37] MR. GALLAGHER: That's not what its labeled.

HEARING OFFICER: * * *. O.k. and then he said —

MRS. AARON (?): She never said such a thing — what happened was in the phone call I was relating to Mr. Barrows that Mr. Panico had shared with me. He wanted to know his impression of what had happened in the building and during that

meeting and I was copying down words and Mr. Barrows said "She never said such a thing" and I wrote in my own notes I got nowhere in terms of trying to resolve what the issue was. And Mr. Barrows then informed me that he would tell the teacher and the teacher said she would try to build the child up according to Mr. Panico's wishes.

HEARING OFFICER: O.k. So essentially this is a discussion with Mr. Barrows subsequent to the phone conversation?

MRS. AARON: Yes.

HEARING OFFICER: O.k. * * *.

THE WITNESS: The notes of my conversation on that same date with Mrs. Aaron are spelled out by her in which she * * * in P-13 which she said were the notes I made on that call and on the next one which is P-14 in which she says was her telephone call with Dick Barrows resulting from my call. The second page of that document ah once you go to Jean Aaron its out of my hands scares me. Is this her conversation with Dick Barrows or Dick Barrows stated that once I go to her its out of his hands and it [38] scares me mean Jean Aarons is scared of a remark like that from Mr. Barrows or if it's mine why isn't it in that telephone conversation with me?

HEARING OFFICER: The point is that you're —

THE WITNESS: I mean I can't state exactly, that is I can't say that this is —

MR. GALLAGHER: We're not saying that, any of that.

Q. Now on March 7, 1978 did you go and see Dr. Lot again regarding Mike?

A. Yes, on March 7th my wife and I went to meet with Dr. Lot for his evaluation of Michael to explain test results and pick up a copy of the test results and you know interpret it and find out his opinion of what we should do.

Q. O.k. And then there is a letter of March 10 from Dr. Lot to Dr. Levine which is our document P-15. Then there is the document P-16 which is the clinical function test result

at MGH. Now on March 17, 1978 was there in fact a core meeting?

A. Yes, as the result of us picking up the documents and asking Jean Aaron to reconvene the core a meeting was set up for March 17, 1978.

Q. Now, regarding, well tell us about the core meeting of March 17, 1978.

A. March 17, 1978 we went to this meeting, my wife and I. [39] Janet Hannon Michael's teacher was there and Myra Fornier, Jean Aaron. Dick Barrows came in, he was not there for the entire period of time but he was there for a good portion of it. If there were anyone else there I don't recall them off hand. At this time the only real subject, the only thing discussed was the MGH results. What the MGH found and it was pretty much agreed Michael had a learning disability which should be addressed. We were told that he would be getting special help, we were told that he would receive one on one tutorial, we were told that he would get counselling by Myra Fornier, only to the extent that counselling would just you know try to get Michael to talk about the fact he had a learning disability, try to get him to you know, remark that he isn't different because he has a learning disability there's nothing wrong with him because he has a learning disability, he just learns differently and this counselling would be done to build up Michael to that degree. Everything was very amiable and when we came out of there the way it was explained to us we were very happy with what was going to be done for Michael. I felt good, I felt my boy now has a chance and seemed as though everything was going to be done the way it should be, at least the way I thought at that time it should be.

Q. Now was there a medical exam done for this core?

[40] Q. 1978?

A. No there wasn't.

Q. Was there a home evaluation done?

A. No there wasn't.

Q. Were you given an education plan as a result of that core in 1978?

A. Subsequent, a few days later, I figure a week or ten days, I'm not sure. We received an education plan covering the period 3/23/78 thru 3/23/79, spelling out what Michael would receive as far as special help. The plan called for one hour a day with Catherine Black alone. By this time we had met Catherine Black and we were very satisfied with the hour a day and it called for the counselling of Michael by Myra Fornier, groupwise and individually, in that specified period of time which was —

Q. And you accepted that education plan.

A. Yes; that was after, you know, * * * Dr. Lot we accepted he plan.

Q. And that is signed on the last, that is document P-16 and it is signed on the last page by Jean Aarons and it is also signed "I certify the above objectives are those recommended by the core evaluation Team and the above-indicated services will be provided in that sum by Richard C. Barrows on April 4, 1978."

A. Right, correct. That's P-17 for the record, not P-16.

MR. GALLAGHER: P-17?

HEARING OFFICER: Yes.

MR. GALLAGHER: You're right.

[41] A. That is correct. It's signed by Jean Aaron, by Richard Barrows as principal and by myself and my wife as parents.

Q. O.k. And was that plan implemented forthwith?

A. Yes it was.

Q. And what did you observe about your son Michael from that point on?

A. Subsequent to the initiation of the plan and I have to bring it up through lets say June when we had our first quarterly core meeting, Michael almost turned around as far as the — his

problems. His headaches diminished at great length, he was more relaxed, he enjoyed working with Catherine Black immensely. He actually attempted to read at home which he had never done before, he was reading small words. He was not the child he had been before, he was more relaxed. He felt pretty good about himself and started to seem to be acting and making pretty good progress in school. School wasn't a chore, there was no night awakening, there was no nightmares, there was no remarks that people were calling him stupid, the teachers calling him stupid or anything else. It just seemed to help Michael terrificly.

Q. Now did Catherine Black continue to tutor Michael through the summer of 1978?

A. During the summer of '78 Catherine Black prior to the end of school, Catherine Black asked us if we would object to having her work with Michael over the [42] summer. There would be no charge to us. She would come and do it on her own. She could get a classroom at the Pine Glen School and we would have to bring him up there I think it was two or three days a week for about an hour or thereabouts. She liked to work with Michael and since he had made such good progress she didn't want to lose any over the summer and she thought it might really help with the method of teaching * * * and she didn't want him to lose anything so she asked if she could tutor him and you know, we said sure. And she did work with him over the summer and we made all * * * about the schedule.

Q. Do you know if she was paid by anyone for her services during the summer?

A. Not to my knowledge she wasn't.

Q. And we have P-18 before you. Now we have a report of Myra Fornier on 6/1/78 concerning — we wish to invite the Hearing Officer's attention to on that P-19.

A. The only thing I can state was P-19 is * * *. The one thing I would * * *.

Q. Then there was a letter of June 7, 1978. Was that report of June 1, 1978 mailed to you?

A. No it was not.

Q. How did you receive that?

A. It was delivered by my son in an envelope to the Parents of Michael R. Panico.

Q. Now on June 7th —

[43] HEARING OFFICER: * * *.

THE WITNESS: Yes. I say to the Parents of and I would like to go on to explain this if I may. This document P-19 was received by us and it was to the parents of and it was brought home by my son. The one previous P-18 from Catherine Black was never received by my wife or I. I have something that I have to bring up to the vulnerability of such a method of bringing these things home. All I can see is my son with a learning problem, forgetful, with a very poor memory problem and whether or not the document P-18 * * * the report was sent I don't know. If it was sent home with my son it could very well have been lost. Also P —

HEARING OFFICER: * * *.

THE WITNESS: No, I'm very concerned about sending home with a child something that is potentially damaging as a psychological report if it gets lost be read by anybody in the neighborhood or a child or anybody else. It could also be read by Michael Panico, he could read or have somebody read it to him. Things that could be extremely damaging to my son and my family if they were. This isn't the things you want to publish in the newspaper or let everybody know.

MR. BERMAN: * * *.

[44] THE WITNESS: I would make P-18 and P-19 to be very damaging to my son and my family. It would have upset my son immensely if anybody mentioned it to him.

MR. GALLAGHER: All right, fine.

Q. Now on August 16, 1978 did you have a conference with Kevin Foley?

A. —

Q. All right, lets go back now. Well we know there's a letter in your records here, #P-20 to Dr. Lot from Jean Aaron, dated June 7, 1978.

A. This letter is nothing more than Jean Aaron stating pretty much what I said earlier to Dr. Lot that Michael was making great progress, good progress in reading and appeared to be much more * * * in this academic area. This is after three months of the specialized program with the hour a day with Catherine Black.

Q. And P-21 is a letter from Dr. Lot to Dr. Levine?

MR. BERMAN: Please, I thought we went through this once. The letters * * *.

HEARING OFFICER: You want to * * * I don't want to rule it out entirely but for reference there are documents I can read myself. * * *.

A. O.K. Well in very short order, P-18 through P-21 are significant in my feeling as they point out to the great improvement Michael made while under a specific [45] educational plan calling for one on one tutorial with Catherine Black.

Q. Now inviting your attention to August 16 did you have a conference with Kevin Foley regarding your son's educational plan?

A. Yes. On August 16 I met with Mr. Foley and the purpose was as follows. I went to Mr. Foley to explain what I felt were all the goofs of violations of Chapter 766 that transpired so far up to that point relative to my son Michael. The fact that we were told there was no testing, the fact that I had to fight for a core, the fact that no educational plan was developed, the fact that I received no notice that there was no need for special needs, the fact that we did not receive notice of our rights of appeal, etc. and I also told him that I felt that maybe the teachers weren't aware of learning disabilities and I offered to buy a book I was reading at the time and donating it to the

school which was agreeable * * *. And I also then — the primary purpose of my being there was my expressed concern over Michael's edu ation, wouldn't Michael get that educational plan if it was called for, would there be any changes. He had made great progress in the first quarter, would it be continued or was there gonna [*sic*] be changes. Mr. Foley guaranteed me that Mike's educational plan would not be changed without our knowledge or against the law, Mike would get all the services he was entitled to.

[46] Q. Now did Mr. Foley give you a letter or send a letter to you which is your P-22 dated August 17, 1978 spelling out the conclusion of that meeting.

A. Yes he did.

Q. And did he spell out that the educational plan would not be changed without your knowledge and your assent?

A. Yes he did without * * *.

Q. Well I would just like your attention to the fact that he said that it wouldn't be done without the core and that there would be a meeting with the school teacher in September to bring the teacher, the classroom teacher aware and the other teachers aware that Michael has a special learning program.

A. That is correct.

Q. In September '78 Michael began the third grade?

A. That is correct.

Q. What was, what happened in September or October of 1978?

A. In September of 1978 when Michael began the third grade the educational plan was still in effect. Very early, maybe a week or so into the school year, Mike began becoming frustrated again and complained about school, too much work. He had told us that he had to work with Mrs. Black and he had to go back to his reading teacher and she gave him all the work he had missed while he was with Mrs. Black and he had to make that up and he had missed recess and missed lunches

and etc., etc. Very early on, I think [47] it was September 29, in fact it was September 29 of 1978, we had a core meeting and at that point in time the problem was brought to the attention of the core team about Michael being frustrated about having to do other work. It was determined that Mike's classroom teacher wasn't aware he couldn't do the regular third grade work and he didn't have to make up the work he missed while he was with the learning disabilities teacher, etc. and she was called into the room, into the meeting and it was worked out and she was apologetic for it happening and she would explain to Michael stating he shouldn't feel frustrated it wasn't fair to him it was just a misunderstanding. She was very nice and very helpful but it had caused him problems. But it was corrected on 9/29/78. At this time the meeting was just in general as to what Michael would expect at the end of the Ed plan and he would be getting the help with Catherine Black.

Q. And was it indicated to you at that time that in fact he was progressing well?

A. Well at that time it was very early in the school year but the reports were that, what had happened the previous year and Michael was making pretty good progress. He wasn't a reader by any stretch of the imagination but he was making progress in his reading skills.

Q. Now subsequently by other sources had you determined [48] that in fact about this time or before this time of this meeting of September 29, 1978 that in fact his reading program, special education program had been effectively cut in half? That is to say he was not getting an hour a day?

A. Yes, in May, 1979 we were told that Michael's educational plan was cut from an hour with Catherine Black to 30 minutes. We were told that the school knew about it and to cover themselves they had Michael sit in the learning center alone and Catherine Black was to give him work to do and then subsequent to this she had told us that he couldn't do the

work on his own. She brought it to the attention of the school department. So we found out in May that Michael's Ed plan had been changed and we were never informed. We went through a whole year being told he was getting the help and being told that he was improving.

Q. Now did you have another core meeting in November of 1978?

A. Yes we did. We had one a scheduled meeting which, when I say a scheduled meeting we were told about it when the meeting was called, it was on 11/16/78. To the best of my knowledge Sally Hennessey, Myra Fornier, Catherine Black, Jean Aaron, Dick Barrows, my wife and I were present.

Q. And effectively what took place at the core meeting?

A. Pretty much we were told that Michael was showing improvement, his reading was improving, he was [49] progressing. Pretty positive type statements were made.

Q. All right. Now did you have other core meetings before May of 1979?

A. Yes, we had a core meeting on March 16, 1979.

Q. Now we have a — P-23 is self-explanatory. It's a statement from Catherine Black we don't have to go into that any further. In February of 1979 did you have, did you take Michael into the MGH. Excuse me, in February 1979 was Mike put in the MGH or the Lawrence Memorial Hospital?

A. Yeah, February of 1979 Michael became sick, seriously ill, couldn't move, couldn't life his arms, couldn't go to the bathroom, stand up, couldn't eat, could not do anything for himself, so we took him to his pediatrician who immediately rushed him to the MGH where they had a team of doctors waiting for Michael and they worked on him for about 10 hours and tried to determine what was wrong with him. At that point in time they had no idea whatever. They admitted him to the Lawrence Memorial Hospital under the direction of his pediatrician with a bed not available at the MGH. Because

of the uniqueness of the situation he was becoming somewhat of a * * * . No one knew what was wrong with him. Anyway he was admitted at that point in time through approximately a week at the Lawrence Memorial, between the Lawrence Memorial [50] and the Massachusetts General maybe twenty different doctors and no one ever diagnosed what was wrong with Michael Panico other than the one thing was that he started to suffer from abdominal migrane [*sic*] brought on at the time pretty much by what they told us possibly could have been just being up tight and that was as far as minimal the best — they could never make any other determination as to what was wrong with Michael though they guessed it could have been an unknown virus or a virus they had never seen before or things of this nature.

Q. From June of 1978 until March of 1979 what report did you actually receive from the school?

A. In June of 1978 we received a quarterly report from Myra Fornier dated June 1, 1978. We received a quarterly report from Myra Fornier, when I say quarterly I think that was the title, a quarterly report from Myra Fornier dated November 13, 1978 and from Catherine Black dated 11/15/78 and we received sometime in mid-June a quarterly report of Myra Fornier dated 6/5/79. These plus his regular report cards.

Q. Did any of these reports or report cards reflect on his behavioral problem from the school?

A. No nothing reflected in any of the report cards or anything we received up until June reflected anything about any emotional problems, he couldn't cope with people, anything actually related to emotion was never [51] mentioned to us and it wasn't in any report.

Q. All right. Now I invite your attention to May of 1979. Did you and your wife become concerned about Michael?

A. Yeah. In May of 79, it probably started April or maybe even a little earlier, I don't know, Michael started regressing, his reading when he would read with us and he tried to read a word seemed a little worse than it had been. I think it was back where it was sometime in the first grade. He couldn't read, he wouldn't read, he didn't want to go to school, he used to wake up in the morning and cry about not going to school. He started developing bad headaches again, when I say bad I mean he has migraines but they run bad, he had very very bad headaches again with vomiting. He started waking up now during the night on a regular basis crying, he would come into our bed, something that Mike has never done since he was a baby, he would cry in the night and just mumble and ramble incoherently. We became very, very concerned about him at that point in time.

Q. Now did you ask for a core meeting or did you attend a core meeting on May 18, 1979?

A. On May 18, I don't remember if we asked for it. I believe it was just set up by Jean Aaron. I think it was just one of the normal ones. Yes we attended a core meeting on May 18, 1979.

[52] Q. All right. Now would you please tell the Hearing Officer what took place at that core meeting? Well first, who was present at that core meeting?

A. At the core meeting of May 18, 1979 was Patricia Mead [*sic*], who was I believe a language specialist, Gail Mason an LD specialist, Catherine Black, Michael's LD teacher, Jean Aaron and Myra Fornier, myself and my wife, and I believe Sally Hennessey who was Michael's homeroom teacher.

Q. What took place at that meeting?

A. That meeting several things took place, I'm going to have to put them chronologically to give you the flavor. We talked a little bit about Michael and then we were given some results. Miss Mead I don't know if she spoke first, but told us

how she attended to Michael and the tests she had given out and the results. She was very very concerned about Michael's memory, memory abilities. Mason also tested Michael and also said the same thing, memory seemed to be a significant memory problem. Both teachers said they found Michael extremely relaxed, a very calm child, a very likeable boy, no problem, etc. They also stated that they were concerned about Michael's memory. We were given a report by Myra Fornier about you know how Michael was coming along in the counselling, what the counselling was accomplishing or wasn't accomplishing, just saying that Michael was you know adjusting a [53] little better, etc., etc. and Catherine Black made a remark about Michael's reading, he wasn't quite making the progress he should be making, in fact she was a little disappointed in the progress he was making. At this meeting and I believe it was right during open when we were all there, a remark was made by Miss Mead or Miss Mason that Michael probably needed a whole program devoted to learning disabilities relative to the Carroll or Landmark Schools. Whether or not this was said while we were convened I don't know. I do know that subsequent to the meeting I talked to Miss Mead and Miss Mason alone and together. Now I don't recall who said it, if it was said by one in the presence of the other or if it was just said with me and my wife there, my wife and I were both present when it was said. We were told by whichever it is and I couldn't tell you who is who now even if I saw them, it was the only time I had ever met them in my life and they were both about the same age, they told us that we should think about taking Michael out of the Burlington School System and putting him in a private school which specializes in learning disabilities. She said Burlington hasn't been able to help Michael and they've had him for three years. Several schools were mentioned by this teacher, Landmark and Carroll, both of which I had never heard of before in my life. Then the same

teacher that had told us about [54] the schools told us that Mike's educational plan had been changed. After this you know now we're in a little bit of a state of shock, I talked to Catherine Black outside the classroom, outside the meeting and Catherine reiterated what she said. She told us that Michael wasn't making significant progress, his educational plan had been changed early in the school year, the change reduced Mike's time along [*sic*] with her from one hour a day to thirty minutes per day. She told us she brought it to the attention of Myra Fornier and the principal and she was told that they were covered because they had Michael sitting in the learning center for the other time and for her to give him work. She said the reason this was done was because they brought another student into her and what she did was work with the other student while Michael sat there. She said this wasn't for Michael. She told them this and said if Michael cannot learn its only gonna increase his frustration and hurt * * * and she was told that this was her job and this was what she was gonna do. She told us that she spoke to the administration Kevin Foley on several occasions during the school year about Michael and the need to get Michael somewhere else and that Michael's educational plan wasn't helping him. She then told us that it was her opinion that Michael was now at a point where he needed a total program which was directed solely toward learning disabilities. I [55] mentioned to her Carroll and Landmark Schools because we had just heard the names and the others and she told us they were both excellent schools and they both dealt in that and that we should look into both of them. She said

they both have their pros and cons it all depends on how you feel about the schools. Look into both of them I wouldn't want to advise you on either one. And I immediately called and made an appointment at the Carroll and at the Landmark Schools for the following week so that we could look at them and know what we were talking about. On that same day May 18 during the meeting * * * I requested that they retest Michael. I told them we were all of a sudden getting different results, we were being told different things, one time we were being told it's his memory, another time we were told it's this and that, would they please retest him so that we could find out what was wrong with Michael and try to help him.

Q. Now I invite your attention to your documents P-24 which we have indexed here as notes of * * * from Michael Panico's special educational folder dated May 18, 1979. Where did you obtain those papers? Those three pages?

A. I obtained these from Jean Aaron from Michael's special education folder.

Q. At the meeting, core meeting, did you indicate that you were thinking of repeating Michael?

[56] A. Not, never, not at this stage, no. Never in the third grade.

Q. All right.

HEARING OFFICER: Let me interrupt for a moment, o.k.? There has already been an agreement on reading the last four lines of that document that has been presented by the * * *, so why don't we just delete this from here. Mrs. Aaron do you remember the number of the document that * * *.

MRS. AARON: * * *.

Q. At the core meeting of May 18 was there any talk about counselling at Mystic Valley?

A. None whatever.

Q. Did anyone use the word flakes in and out?

A. No, especially with the * * * math process throughout, and especially at that time we were always told that Michael was doing great equivalent or above in his math, he grasped things very quickly, etc., etc.

Q. And that's consistent throughout his record?

A. Yes.

Q. All right. Did you have any conversation with Jean Aaron regarding this document? The P-24?

A. Yes on August 17th subsequent to the mediation meeting between myself, my wife and my attorney and Jean Aaron and Kevin Foley, we went over this folder and I say we, myself, my wife, and my attorney and Mrs. Aarons to pick out the documents in Michael's folder that we wanted to copy that we didn't have. This document and it was three pages together, as soon as we saw it it stuck out [57] because of the remarks which we deleted which is thinking of repeating, we gave your * * *, etc. and attached to it there was a name on a piece of paper —

MR. GALLAGHER: That's been removed already.

THE WITNESS: Yes, but I've got to tell you of the documents.

A. Mrs. Aarons said that the bottom four lines on this page did not relate to Michael whatever that she probably had this sheet out when she got a telephone call. We turned to the next page and mentioned to her well * * *, where did that come from, math process, not wanting to do what he likes math, that is one of the few things he does want to do. And she said that didn't pertain to Michael either it pertained to the same child as did the counselling in Mystic Valley. I then asked Mrs. Aarons, you know, why is this on there, and she told me these were the notes that were taken at the May 18 core meeting, these three pages, and she probably had them on her desk working on them at the time when the telephone rang. She identified all these three pages as being notes taken at the

core meeting of May 18, 1979. One of the things I asked her was why on the top it said father telephone call if they were the notes of the meeting and she told me that it probably meant that she was gonna make a telephone call to me later about something, that she wanted to call me about something and that's on page 3. [58] She identified these three pages as being one document, they were all together, they were held together as a clip and they were told to me that they were the notes of the May 18 meeting and that is the reason we copied them.

Q. And the last page on the lower right hand side the words "Landmark and Carroll" appear?

A. Yes they do.

Q. Was the tonality of what took place in the following meetings significantly different than the tonality of your conversation in the hallway with Miss Mead, Miss Black and Mrs. Mason?

MR. BERMAN: Objection, the form of the question.

HEARING OFFICER: Can you rephrase it?

MR. GALLAGHER: Well, we'll use an analogy, Aristotle likes that.

HEARING OFFICER: O.k. You were referring to —

MR. GALLAGHER: It was the core meeting which took place on the 18th of June and —

HEARING OFFICER: and did the parents perceive any difference in the —

MR. GALLAGHER: It was different communication from which took place in the following meeting and what took place in the hallway.

HEARING OFFICER: [A] word substitute?

MR. BERMAN: Well what about the word [59] intolerant?

HEARING OFFICER: O.k.

A. At the May 18, 1979 core meeting we were told, we were read a few test results, we were told about Michael that

he wasn't doing too badly, he was progressing, etc. At the meeting everyone was very cohesive. Everybody was saying, you know, nice things and nobody came out and said anything to us other than the fact you know, I mean again like I say I don't recall if it was just at the meeting, but if it was it kind of even went by me when in the open meeting it was said Landmark and Carroll maybe we should look into or maybe a program like that or that program or what, I don't know. What I did perceive different was that when the meeting was over when a teacher, teachers talked to them alone we'd get a completely different perception of what we — we were told things completely different or in a little different way that Michael wasn't making the progress and his educational plan had been changed, that he needed a total program. Yes, I felt that I wasn't being levelled with when we were sitting as a team but I was being told straightforward by these teachers when I was alone with them.

Q. And did this alert you to start reading Chapter 766 in the laws and regulations of * * *?

A. It sure did. That's when I called the Commonwealth of Massachusetts to get a, that day, that afternoon to get a set of the Chapter 766 Regs. or law or what have you mailed to me.

[60] Q. Was the decision made by the team at that meeting as to an Ed Plan for 79-80?

A. Nothing was discussed about a plan. No decision was made, I shouldn't say nothing was discussed. No decision was made as to what or where Michael would be going in * * *.

Q. Do you know if counselling was provided for Michael from September 1978 to June of 1979?

A. September 1978 to June of 1979, I have to say, ah let me place my dates here. Second grade, yes I was certainly informed all the way through that there was counselling provided to Michael by Myra Fornier.

Q. Do you know — now lets see — we have some of our exhibits out of order here. I think 34 to 39 would be perhaps

appropriate at this point, I don't need to go into them in detail just effectively.

HEARING OFFICER: Yes, * * *.

Q. Now on May 25, 1979 did you have a conference with Jean Aaron and Richard Cavanaugh and your wife here at the schools in Burlington?

A. Yes I did.

Q. May 25th?

A. Yes I did.

Q. Would you please tell the Hearing Officer what took place at that time?

A. My wife and I requested to meet with Mrs. Aaron and Mr. Cavanaugh, we met here at this school and were [61] introduced to Dick Cavanaugh whom we had met previously as the school psychologist and we were told that he examined Michael and the reason he wanted us up there to talk to him was that he was very concerned with the test results. We were told that Michael was severely depressed and anxious by Mr. Cavanaugh. We were told in such a way that I wrote on my notes to question suicide, sick, I was concerned. I asked him the questions was he suicidal and he told me not now, no he's — I also asked him if he needs psychiatric help and he said not at the present time but maybe he will need it if things aren't improved. He told us that Michael used distinctiation, I'll never forget it, it's a word I've never heard. I asked him what it was and he told me it's a or something to the effect of — he told me by one of the tests that Michael looked at a picture of a girl in a doorway of a cabin which was very sad and she was in tattered clothes or and a boy was sad and Michael talked all around these sad myths and talked about the building being brown and her wearing a certain colored dress and he explained that as distinctiation, not focusing and not, you know, noting what was there but talking around it because he wouldn't admit that there was ever sadness in the

world and he told us that Michael felt useless, he doesn't look at the whole picture, he only looks at the minor details. He takes a look around the thing not to focus on the sadness. He told us that the family life for Michael [62] o.k. His family was held in very high esteem but he's scared of the outside world and everything around him. He told us that Michael has a super ego which he can't meet and he's scared of feeling and then he told us that the reason Michael can't learn is because he has emotional problems. He can't concentrate on learning. He told us the emotional problems caused all kinds of things and he became depressed and angry and anxious and because of all this he couldn't focus on what he was doing and that's the reason he couldn't learn. I asked again if he needed help and Mr. Cavanaugh at that time told me not now but he will if his emotional problems continue. He stated that conflict bothers him and he feels he can't do anything right. There were other things we discussed more about his emotions and how emotionally distraught he was, how anxious, how depressed, almost to the point that I was or became a nervous wreck thinking of all of a sudden I had a sick, sick little boy. After Mr. Cavanaugh got through, Mrs. Aaron told me that based on this here report of Michael's emotional problems she was going to prepare an Ed Plan calling for Michael to go to the Pine Glen School. She said there's a class there for emotional children which John MacLair [*sic*], I wrote in my notes later, which John McLair teaches. She said he really helps these kids to build up their egos, they rely on them. She told me he was going to Pine Glen next year, he can be helped there. Mr. Cavanaugh then told us Mike's smart in some [63] things but other things he has trouble with. Then he told us about the test and he told us he tested Michael — no I'm sorry we asked him about the test because we told him the test was done on the day before, the 24th of May, and we told him Mike came home very concerned because he had to miss recess,

he was kept behind and tested, he couldn't go to lunch with his class and he was told by the guy that's o.k. you can go down later that's when the kindergarten and first grade was going to lunch and that really bothered him and he told us about this so I asked Mr. Cavanaugh about this and Mr. Cavanaugh told us that it was true. The test situation was such that Michael you know had to miss some of his lunch and some of his recess. etc. In fact he said that maybe Mike's, maybe he scored lower than he should have, he's probably even smarter than it shows on his I.Q. etc. because maybe some of these outside interruptions and these outside things were bothering him at the time he was tested. He also told us, I asked a question of learning disability and we were told he had no learning disability, his emotions, the emotional things were his problem. That he could be helped at the Pine Glen School with John MacLair, John MacLair could help him. Then we were told by Jean Aaron that the, we were also told that his reading problem was a result of the emotions and he couldn't concentrate and therefore he couldn't read. Then Jean Aaron told us that the Memorial School wasn't for Michael. She said that [64] Michael had what they referred to in the Town as the Memorial School Syndrome. That Dick Barrows the principal ruins the kids in that school and he's only interested in achievers. She told us that she wanted to get Michael out of that school a long time ago but she couldn't do it because of the law, having to go to the closest class, but now because of Cavanaugh's finding of emotional problems she could place him in the Pine Glen School. She told us about a girl in John MacLair's class who made great progress to the point where because of him, with his help, she even now leans on him, she needs him for support. She could have left the class but she had to stay there because of the need for his support. She told us the kids love him. Also Cavanaugh reported Mike's emotional problems cause everything. Mr. Cavanaugh stated

in his report, "Mike's emotional problems cause everything. He has no learning disability, the emotional causes it. He won't need help for reading once the emotional problems are gone." And I asked the question what came first of — Mr. Cavanaugh, the chicken or the egg. It seems to me that if I couldn't do something, I couldn't do a job at work, I'd become frustrated and I'd probably start having problems too. How can he state that the emotional is causing the learning, couldn't the learning be causing the emotional and he went on around about this and his conclusion was that in this instance the emotional was so severe that that's causing [64A] him not being able to learn. Mr. Cavanaugh then left and we sat with Jean Aaron quite a while. I asked Jean Aaron if from her opinion on what she knew was Mike dangerous to himself or anyone else and she said she didn't think so. She told us that, again she reiterated that Michael shouldn't have been in the Memorial School, the principal was only interested in achievers, he doesn't believe in learning disabilities, everybody is immature when they are born late, etc. I then told Mrs. Aaron — oh, we were also asked to visit Mr. MacLair's class, to take Michael to Mr. MacLair's class the following week so that Michael could see where he was going to school the following year and so that we could see the class and you know, it would be easier for Michael next year, we could see the class and see what grade * * * he worked with these emotional children. At the end of the meeting I told Mrs. Aaron that I couldn't just out and out accept the psychologist's report which to me was as serious as if they told me that my son had a heart condition. I'd have to get another opinion. I'd want him examined by a competent psychologist, not saying that Mr. Cavanaugh wasn't, an additional competent psychologist to get their opinion to find out what exactly was wrong with Dr. Lot, I mean with Michael. I told her that I would like to bring him back to Dr. Lot, we would the following Monday or

Tuesday and we asked for the [65] psychologist's report to be ready. At this point Mr. Cavanaugh hadn't put his report into writing. He was reading from his notes. I told him we had to have it in writing so that we could bring it to Dr. Lot and to an additional psychologist. I then asked her you know if we could have additional testing done on Michael and from my knowledge now which I didn't know before I told her that I ended up paying for all this myself back in 1977 and 78 because no one had ever told us about it and I said now I'm asking you will it be paid for by the Town the additional assessment or I can't agree with these and she agreed and said that they would be and she told us that she would try to arrange I think it was a Dr. Bowman [*sic*] who was also at the MGH in the neurological unit with Dr. Lot and I told her that would be fine that I would like to talk to Dr. Lot first and if he had the time and he would do it I would rather him coordinate it. But Mrs. Aaron was very agreeable to have Michael retested and we would try and see what we could do for Michael. And that's pretty much how the meeting ended.

Q. Now were your notes of this meeting incorporated in P-25?

A. Yes they are.

Q. When did you make those notes? P-25.

A. All the notes on both pages were made during the conversations except for on the left hand margin there are notes which I made when I went home and I put a [66] question mark, Pine Glen — looking into other school, serious problem — worried about Mike. I just put those on there. I don't know why I made them when I went home. I don't know what I intended to do with it or why but those notes in the margin were not made during the meeting, the other notes were all made during that conversation.

Q. Now, did you —

HEARING OFFICER: Could you clarify that date?

THE WITNESS: This was May 25th with myself, my wife, Mr. Cavanaugh and Mrs. Aaron.

Q. Now on May 29th did you see Dr. Lot?

A. Yes.

Q. And what was the conclusion of that meeting with Dr. Lot?

A. Just give me a minute, I want to make sure I'm on the right track.

(DISCUSSION RE: BREAKING FOR LUNCH)

A. Yes we met on May 29th, 1979 with Dr. Lot and we also gave him a copy of the school psychologist's report. At this point Dr. Lot immediately upon looking at the report said that he thought that the school psychologist misinterpreted the test results and he felt that any child with Michael's intelligence is suffering, not being able to learn and having a learning disability would display some depression, some anxiety which would [67] be only a normal result of not being able to learn. He said it would be more a cause, I mean it would be a cause of the learning disability and would not be, I'm sorry it would be the result of the learning disability and certainly wouldn't be the cause. He also told us or we should say we told him of the Town's decision to place Michael in a class for emotional children and he had told us you know based on what we got now he doesn't belong with any emotional children of any kind, he has to learn in a setting conducive to learning. He told us that he would like to alleviate our fears and just to be certain he would like to have Michael re-tested by a clinical psychologist, someone you know who would be highly respected by him and also to refer Michael and us and all of Michael's records to Peter Schoenfeld [*sic*] who I think he said at the time was in charge of the learning disorders unit at the MGH for her opinion of Michael and pretty much the way it was we were to get the names of the Doctor Isenthal [*sic*] and get his address and set up the appointments.

Q. And P-26 is just a notice of the core meeting to be held on June 4th?

A. Yes.

Q. And who was supposed to make the educational assessments for that meeting on June 4th?

A. The date of the meeting and the notice of intermediate full core evaluation dated May 25th included being present John MacLair and this was dated the same date [68] that we had the meeting with Jean Aaron and Dick Cavanaugh. John MacLair * * * being at the core meeting.

Q. At this point no one had, there had been no assent or no team meeting agreed?

A. What?

Q. At this point there had been no core meeting or team meeting agreeing that or concurring that Michael should go to John MacLair's class?

A. There had been no meeting whatever relative to this point.

Q. All right. And on May 31 a self-explanatory letter to the Panicos from Jean Aaron which is document 27. Document P-28 is a letter from Dr. Lot to Dr. Levine dated May 30, 1979. Is there anything you wish to bring to the attention?

A. The only thing I would would be the second paragraph more or less the last sentence which states "The school has questioned whether the primary disturbance may be emotional." This is how Dr. Lot interpreted the school psychologist's report and how we expressed it to Dr. Lot. At this point in time we were told flatly and on May 25th that the class was for, a class for emotional children, and this is what we had told Dr. Lot that they wanted to put him in a class for emotional children.

Q. And P-29 is a report from Peter Schoenfeld to Dr. Lot dated June 27, 1979?

[69] A. That's correct.

Q. And Peter Schoenfeld is the Master of Education at MGH?

A. That's correct.

Q. Is there anything in that letter that you wish to bring to the court's attention?

A. Several items. One in particular would be paragraph 4. or paragraph 3, I'm sorry. "Mr. Panico understood from Dr. Isenthal although Mike's emotional adjustment is of concern, none of the problems exhibited are secondary to his learning disability." Paragraph 4 "In a recent telephone conversation I had with Mrs. Black, Mrs. Black was Mike's LD teacher for a period of approximately a year and a half, this was again reinforced. She indicated that Mike's learning needs were such that the expertise of special educators, burst [*sic*] in the field in the problems of dyslexics, were indicated for his full school day. She further clarified a concern for the type of public school class recommended for Michael may be detrimental to his educational and social adjustment in the children placed in this class have primary emotional disorders. I asked her to document this in writing as best she could (see enclosed note) without jeopardizing her position with the Burlington Schools." There is an attached note —

MR. GALLAGHER: We'd like to invite your attention that Catherine Black statement which is just [70] before P-30, the last page of P-29.

Q. Now P-30 is the letter of July 10, 1979 to you?

A. Yes it is. This was the first time that Dr. Lot himself would state to us that Mike should be in a class specializing in learning disabilities, learning handicaps. Prior to this we had asked if he should go there and he said he wouldn't know until the psychological testing until he could examine all the records, etc. On this date he told us that this is where he felt that Michael belonged. The reason the Carroll School was mentioned instead of another school is because we had told him that we preferred the Carroll School over the other schools that we had looked at and that's why he singled out the Carroll.

Q. On your letter, P-31 is a letter from Dr. Levine dated July 25 and I think that that is self-explanatory unless there is something you wish to bring in.

A. Just to add to this that this was discussed in great detail with Dr. Levine with Michael brought down to Dr. Levine with a number of his records and his conversations at least the way it was explained to us, with Dr. Lot and others that his feeling was that Michael belonged in a class specializing in learning disabilities and again not for emotionally handicapped children. Again this is what we told Dr. Levine the class in Burlington was because this is what we were told.

Q. I'd like to invite your attention to document P-32 a [71] letter of August 1, 1979 over a signature of Dr. Lot enclosing a report of Dr. Sherman Isenthal, is there anything in this that you wish to bring to the —

A. Nothing except that this was his reinforcement of his previous position, possibly a little stronger, and he included (end of tape).

MR. BERMAN: * * * for the record the amount of time that Michael missed from school because of the illness that he sustained in February of 1979 which you previously described.

THE WITNESS: The exact time I'm really not sure of. What I can tell you is that the maximum it could have been was five days from school. I believe it fell around the February vacation and Michael was home on vacation that was out of school while he was sick. But per the school records he was only absent five days in the whole third quarter.

MR. BERMAN: Well wasn't he hospitalized for ten days?

THE WITNESS: I don't think it was ten days he was hospitalized for a number of days. The sickness covered a period of approximately ten. I think he spent maybe, well I don't think you'd call it a day in the hospital at the MGH, maybe ten hours or so at the Mass. General. He then spent

approximately five days at the Lawrence Memorial Hospital, in the hospital.

[Transcript of a portion of the administrative hearing held on October 30, 1979 before a Hearing Officer of the Bureau of Special Education Appeals of the Department of Education, Commonwealth of Massachusetts. The transcript includes the remainder of the testimony of Mr. Robert Panico, the father of the child, a witness called by the parents, found in the Record-Appendix, Volume III, pages 166-265.]

EXAMINATION OF ROBERT A. PANICO BY MR. GALLAGHER:

Q. Now once again for the record would you please state your name?

A. Robert A. Panico, P-A-N-I-C-O.

Q. And you are the father of Michael Panico?

A. That is correct.

Q. All right. And you have testified previously in this case?

A. Yes I have.

Q. Now inviting your attention to May 29, 1979, did you have a meeting with a Dr. Lot?

A. Yes I did.

Q. And did you discuss a report by a Mr. Cavanaugh with Dr. Lot at that time?

A. Yes I did.

Q. And did the doctor express an opinion about Mr. Cavanaugh's report?

A. I showed Dr. Lot the psychologist's report that was given to us, Richard Cavanaugh's report. He read it and immediately upon reading it he said that he felt that it was erroneous and certainly it wasn't conclusive and it wasn't indicative of * * *[1] sound judgment, it was nothing more than he would

[1 Asterisks appearing passim in this transcript indicate portions of questions and answers that were apparently unintelligible and therefore not reproduced by the stenographer.]

expect of any child with a learning disability. That the learning [167] disability would cause emotional problems but the emotional problems were not causing any learning disability.

Q. Did the doctor express an opinion, Dr. Lot express an opinion as to whether Michael should be put into a class for emotionally disturbed children?

MR. BERMAN: I wish to object to this. Dr. Lot has been a witness here and anything that Dr. Lot said or anything that he expressed would have been given while he was a witness and I don't think there is any need to have second hand evidence where first hand evidence has been available to the Hearing Officer and the * * *.

MR. GALLAGHER: I believe Dr. Lot already testified to that.

MR. BERMAN: Fine, then we don't need it a second time in that event and if Dr. Lot didn't testify to it then there is no need to repeat it now. I mean there's no need to get into it now.

HEARING OFFICER: In the interest of not having redundant questions and statements perhaps we can hear what * * * in a shortened kind of way.

MR. GALLAGHER: Well that's exactly what I'm trying to do is tie in the testimony from where it left off last time to get rolling again today. I don't think I'm being redundant by asking the question, you know, we're less than two minutes into testimony at this point.

[168] HEARING OFFICER: All right, let me overrule it and allow the question and the response to go into the record. If you want to * * * you do have the written statement for Mr. Panico so if you * * * can be used to highlight that or amplify it well then we'll go through it * * * * * *.

MR. GALLAGHER: O.k. Well just go ahead. Did he indicate?

A. Dr. Lot stated that he did not think Michael should be in a class for emotional children.

Q. And did he indicate at that time that he was going to refer Michael for additional tests?

A. Yes he did. He said to alleviate my and my wife's fears because we were told that Michael was depressive, almost to the point of suicidal, etc. and he assured us that there was nothing like that with Michael but just to reassure us and to make sure that there were no primary emotional problems he did refer him to Dr. Isenthal.

Q. All right now you've used the word "he" twice in that last sentence.

A. Dr. Lot.

Q. Did Dr. Lot say that he thought Michael was suicidal?

A. No, this was the — I would say this was an indication that my wife and I derived from listening to Jean Aaron and Dick Cavanaugh.

Q. All right. When you say he thought that Michael might be suicidal it was Mr. Cavanaugh.

[169] A. No, let me correct myself. We derived this opinion from the way Mr. Cavanaugh spoke to us and the way he expressed his opinion of Michael based on his psychological testing. I drew the inference to the point I questioned him on two occasions, is Michael suicidal. He never said Michael was. He said not at this time. That's Mr. Cavanaugh said. Not at this time, but that was one of my concerns that he could be, that there were any serious problems with Michael and that's what I expressed to Dr. Lot.

Q. And Dr. Lot said he didn't think there was anything * * *.

A. Right.

Q. All right. Now I invite your attention to the record the letter document P-27 and this is the letter from Jean Aarons to Mr. and Mrs. Panico of May 31, 1979.

A. That is correct.

Q. And this spells out that Jean Aarons had been informed that you had made a phone call on May 30th to her indicating your attempt to have Dr. Lot coordinate psychological acceptance for Michael through the MGH?

A. That is correct.

Q. Now I invite your attention to document P-28 and this is dated May 30th, 1979 from Dr. Lot to Dr. Levine.

A. Yes.

Q. Is there anything in that that you particularly wish to invite to the court's attention?

[170] MR. BERMAN: I object to that. If there is anything in that that Mr. Gallagher wants to * * * as an exhibit or anything Mr. Gallagher wants to invite to the Hearing Officer's attention he is welcomed to do so. I don't think there is any basis for Mr. Panico to decide whether he wants to invite the Hearing Examiner's attention to this letter. Mr. Panico is not yet qualified as a pediatrician or a neurologist.

MR. GALLAGHER: Well he's a qualified parent.

MR. BERMAN: Yes that's exactly what he is, a parent. The letter speaks for itself and if there is anything in it that you feel to be * * * in the letter then I'm sure the Hearing Officer will give you and me Mr. Gallagher and Miss Manoil the opportunity to amplify to our heart's content —

HEARING OFFICER: I think I will * * * I think that in terms of statements from Dr. Lot we have his complete testimony on record if there are things you wish to * * * look or * * *. I would prefer that Mr. Panico * * *

MR. GALLAGHER: Well in any event this letter is before the Hearing Tribunal.

Q. Now I'm inviting your attention to P-29 of the Plaintiff's exhibits. do you have there a document to Dr. Lot from Peter Shoenfeld on MGH stationery spelling out a certain assessment of Michael Panico?

[171] HEARING OFFICER: I have it here.

MR. GALLAGHER: All right. Now I'm inviting your attention to P-30, we have a letter from Dr. Lot of June 30th, July 10, 1979 to the Panicos regarding Michael Panico.

MR. GALLAGHER: P-31. These are all that you are familiar with. P-32 a letter over Dr. Lot's signature on MGH stationery to Robert Panico. P-33 — and oh incidentally, P-32 contains with it a psychological test report over the signature of Sherman Isenthal, PhD from the MGH and I believe the doctor has testified partially on that before.

HEARING OFFICER: That was the testimony from Dr. Lot —

MR. GALLAGHER: Right. Now P-33 you have a note obtained from Michael Panico — well tell us do you know what P-33 is?

A. Yes I do.

Q. All right. Please tell the court what P-33 is.

A. P-33 were records that I obtained from Michael Panico's special education folder. They were told to me to be the notes of the June 4, 1979 core meeting.

Q. Now have you reviewed these notes?

A. Yes I have.

Q. Is this reflective of what you understood took place at that meeting?

A. Not at all.

Q. Do you know who wrote these minutes or who wrote these notes?

[172] A. I'm not sure, I have an idea but I couldn't be positive who wrote them.

Q. Do you object to him saying who he understood wrote them?

MR. BERMAN: As long as the evidence is clear that it is from no more than his understanding.

MR. GALLAGHER: All right.

Q. Who do you understand wrote them?

A. I believe they were written by Myra Fornier.

Q. Now who was present at this meeting according to your memory?

A. On June 4, 1979 it was Myra Fornier, Sally Hennessey, Rebecca Silverstein, Catherine Black, Jean Aarons, John MacAlair, myself and my wife.

Q. Now under the notation on the second page of these note minutes there is a statement regarding parents. "Michael thinks he's dumb." Was that your only input into this meeting?

A. Absolutely not. My input was extensive and these — o.k. when I say my input was extensive I discussed Michael, my wife and I discussed Michael with primarily with Jean Aaron and also with John MacAlair. We talked, we had a discussion with John MacAlair as to what his class was and we also discussed with Jean Aaron my feeling that Michael didn't belong in a class for emotional children, that the doctors had given us preliminary indication that Michael's problems were not emotional and that what was this class gonna do [173] for him. I asked what it was gonna do for him with regard to a reading disability and learning disability. I was told that once he overcomes his emotion problems there won't be any problems with reading. There was quite a bit of discussion on it, none of which appears here. The only thing that does appears here is short notations which supposedly are summations evidently of the people who weren't even at the meeting. A lot of them were, some weren't.

Q. Now who was your liason with the core meeting?

A. To my knowledge the only person we ever had a liason with was Jean Aaron.

Q. Was there a concensus in your opinion from this meeting of Michael going to the Pine Glen School?

A. There was no concensus, there was no discussion, asking of anyone or anyone questioned or anyone's opinion asked. It was already assumed. I think it was Catherine Stone that Michael was going there. Jean Aaron stated that Michael was going to be going there. John MacAlair was there to explain the class, what he was going to be able to do for Michael and they made several remarks about how he would handle, you know, what his program involved. There was nothing whatever reflective of a discussion as to what Michael's best interests were, why Michael should go there or any indication why Michael should go there other than the fact that Jean Aaron had said that Dick Cavanaugh found Michael to have emotional problems which, because of which he could not concentrate and therefore couldn't learn.

[174] Q. Now you have previously testified that you had been told by Mrs. Black and also by a Mrs. Mead or Miss Mason that Michael should be in a special school for learning disabled children. Was any mention or consideration given to this at that meeting?

A. None whatever. Excuse me, I mentioned it to, it would have to have been to Jean Aaron, I mentioned that I was looking into the Carroll and the Landmark School and to date I didn't know what we were going to do. But it was mentioned yes, but it wasn't mentioned or discussed as part of the team meeting, it was talked to more or less after the conclusion of the meeting.

Q. Who made the decision to place Michael in John MacAlair's class?

A. Jean Aaron on May 25th.

Q. And that decision was made on May 25th?

A. Absolutely.

Q. Did you state that you rejected the plan that was offered to you pending input from Drs. Lot and Isenthal?

A. I don't believe that I said I rejected it. I possibly said that I would reject it. In fact I remember asking Jean Aaron if I could reject it and then if I felt that this was the class for him could I then — did the rejection mean he couldn't go there or what and she assured me that no, anytime I could change my mind. I did tell her that what I had to date I would be rejecting the plan for an emotional class for Michael until I got the conclusions from the doctors. I also at that [175] point asked if they could get the plan right out since we probably were gonna have a problem I wanted the plan so that I could reject it and go to a hearing prior to September so that we could straighten Michael out for the upcoming school year.

Q. Now I invite your attention to P-34. This is a report of Myra Fornier dated 6/5/79.

A. That is correct. This was a report we received, my son brought home in an envelope to the parents of and, it supposedly is a quarterly report of Myra Fornier who was the counsellor of Michael, and it said that counselling sessions proved unproductive in diminishing anxieties and depression which kind of, well at this point didn't shock us because we had heard from Dick Cavanaugh an emotional problems had all of a sudden cropped up, but prior to that we never heard the word depression, anxiety, etc. from a school counsellor or from anybody else related with the school system.

Q. And they indicated in that report that depression was related to school achievement?

A. Yes. They also indicated that maybe an alternative suggestion would be outside counselling — outside of the school setting.

Q. All right. On June 15th did you make a call to Jean Aaron and ask for an Ed Plan?

A. I called her office I did not speak to Miss Aaron, I spoke to her secretary and asked for an Ed Plan. I told her I was leaving, I was going away on business and I [176] would be

back in about a week but could she please have it there so we could get it to the doctor.

Q. Did you again make a call on June 27th to Jean Aaron and ask for an Ed Plan?

A. On June 27th I called because we had not yet received the Ed Plan. I had now become familiar with Chapter 766 and I realized that it was late, and I wanted to reject it. I called the Commonwealth of Mass. to find out how to go about it and they told me to first contact the school which I did. I told them that if I didn't receive it I would just send a letter stating that I rejected it as I understood it and request a hearing.

Q. O.K. Now I invite your attention to P-35. Would you please tell us where this document came from and what it is?

A. This document came from Mike Panico's Special Education Folder and its — it appears to be a note made by someone in Jean Aaron's office I would assume stating that I called and that I would be sending a registered letter to the Superintendent because the plan was not completed within the ten days after the meeting. Also I'm gonna reject the plan any way.

Q. Did you subsequently have a conversation with Jean Aarons or about this same time have a conversation with Jean Aarons about what Drs. Lot, Isenthal and Mrs. Black had said?

A. Yes. Jean Aaron called me back after I called her on the 27th and told me she was sorry the plan wasn't there but [177] that she would have it ready for me, she would try to have it ready the next day. I then told Jean Aaron that Dr. Lot, Dr. Isenthal, stated that Michael's emotional problems were secondary to a primary learning disability and that this didn't call for placing Michael in a class for emotional children but that he needed help for a learning disability. I also told her that I had conversations with Mrs. Black who stated that this class wasn't for Michael and it wouldn't help him and that I felt that placing Mike in a class like this might be detri-

mental and I asked if, you know, now that we have something from the doctors, the psychologist and your own teacher in the school system, do you think that's where he belongs? And she said she didn't agree with the doctors of Mrs. Black and she was recommending MacAlair's class.

Q. Fine. Did you get the Ed Plan finally on June 28th?

A. Yes my wife picked it up that — at the office, Jean Aaron's office.

Q. At that time was

(remainder of tape blank)

[178] (beginning of tape # 15)

A. O.K. We would be discussing the educational plan dated June — 1979 to June, 1980.

Q. * * * 1979 which is in our record here as P-11.

A. My reasons for rejecting several — the first thing is I became familiar with Chapter 766. Now the participants, Mr. Cavanaugh, Miss Mead and Miss Mason weren't there when the educational plan was developed and we never had a chance to talk to them about the educational plan or anything else. At the June 4th meeting there was no inflict [*sic*] as to an educational plan by Becky Silverstein, Mrs. Hennessey or my wife or myself. That s the first thing. The second thing was after what had happened with Burlington in the past changing Michael's education plans, etc. without our knowledge, the educational plan wasn't even signed by the principal of the school. These were minor points but they were important to me at the time. Further the plan did not seem to be reflective whatever of my son. An example of that is in the performance * * * which I believe I labeled as Ed 10, the performance level of Mike Panico, Mike has a sight vocabulary of at least 200 words. He has no sight vocabulary anywhere near 200 words. Michael

is able to use the suffix sed, ing, y, ly, s, ss, tion, etc. He can use the prefixes re, un, dis. Michael can't do any of that. Michael can't read period. He can't read at all. Michael knows the vowel combinations, ay, ai, plurals f to v, y to i, etc. [179] He absolutely doesn't. His performance level just is not Michael. The next thing is that if I just relied on what the school, the testing and what the school had done, I would have to refer to, going back, Myra Fornier in P-34 stated that counselling was unsuccessful and she also said in the same thing that counselling in a non-school setting is probably what would be appropriate. Yet no where in the Ed Plan did they discuss counselling. There is one area, item 11, to be able to express feelings, primary No. 11, General Objectives, and its the only thing not even spelled out in the Ed Plan, there is no provision for any, anything dealing with Item 11 and yet that's the only thing that had to do with any kind of counselling and yet its not addressed. The next thing is P-36, Michael's teacher, Sally Hennessey, taught Michael for two years. In 2D of Exhibit 36 Sally Hennessey states he is easily distracted and prone to inattention. Everything that I have read discussed and we've been told about learning disabilities from doctors, from the Burlington School System and anyone else is that distractability is one of the most easily recognized characteristics of a learning disability. She spells it out and yet there's nothing addressed to a learning disability in the whole educational plan. Further, Miss Hennessey said that Michael's at grade level in math, social studies, science, writing, and yet the Ed Plan called for at the time is in a class for a primary adjustment class where he takes everything in [180] a primary adjustment class and yet the school itself was telling us that he was at grade level in math, he was at grade level in science, reading, I mean writing, etc. and yet they prepared an Ed Plan which they're saying is least restrictive but they're putting him in a class not putting him with anyone else. She also says that he

needs a small group instruction. I agreed with that part of it. But she also says at the same time that he's at grade level or above in math and that they made no provisions except to put him in a special class even for math.

Patricia Mead's statement on her testing on P-37, is direct conflict to what the psychologist stated. She said throughout testing Michael was cooperative, friendly. He became distractable at times, he was not anxious during the testing and he did not become frustrated with any of the tests. That's a complete contradiction to the psychologist's report where at page 4 and 5 in the Ed Plan it says at the bottom "the perceived negative attitudes concerning academic competence contribute to him questioning his self worth and cause him to be anxious, sad and angry. This cycle of negative attitudes and feelings caused depression and result in Michael's difficulty to focus attention on tasks and to observe sufficient energy for tasks completion to meet with success. That's the learning constraints on Michael yet it's completely opposite of what's said by, so far by Sally Hennessey [181] and Pat Mead. And then by Gail Mason in P-38 who also tested Michael and her comments on Page 2 were Michael was friendly and responded appropriately to all the tasks that were presented to him. He was calm and relaxed and displayed a sense of humor during the testing period. Again I'm not indicative at all of emotional disorders or a class that calls for primary adjustment, and completely opposite of what we were told on May 25th by Jean Aaron and Dick Cavanaugh where Michael's whole problem was his frustrations, the fact that he was anxious and that he had severe emotional problems. Also on both Mason and Mead at the conclusions questioned Michael's memory problem which is a prime characteristic of a child with a learning disability and yet there is nothing addressed in the Educational Plan to deal with his memory problem. Now we have had discussions with Miss Mead and Miss Mason subsequent to the,

I think it was the May 18th meeting, and I forget again who, which is which and right now I don't know, where they told us that memory is one of the things that no one knows too much about and what part of the brain even controls it, or what you can do about it. At that time nobody ever said emotional, nobody ever mentioned emotional problems or the cause being emotional. The memory things aren't addressed in the Educational Plan. On P-39 Becky Silverstein states that Michael appeared to be at ease and stated that he remembered doing this before. He further stated that it [182] was easy and kind of fun. Michael asked how he did after each test was completed. Again, no indicative of emotional problems which is what we were told this whole Ed Plan had to do with. Miss Silverstein also states that Michael's oral read is at a slow labored pace. A limited sight vocabulary hinders fluency of reading low level materials. Based on the types of errors made Michael appears to rely on the shape of the word rather than focusing on the letters in the word. Well that indicated to me that Michael had a problem reading and no where in that educational plan other than a statement to obtain grade level reading skills or to apply mastered phoenetic skills, is there anything which spells out a way to help Michael. In fact we had asked Jean Aarons what kind of help Michael was gonna get for his learning disability and we were told at the May 25th meeting that once Michael's emotional problems were out of the way he'd be able to read. He didn't have a question whether he had a learning disability. Becky Silverstein, the reading specialist who tested him, as a general objective said to raise reading level and yet they wanted to put him in a class which is by its own name, its a primary adjustment class. It just didn't seem appropriate to me.

The second psychologist's report which I indicated earlier, Mr. Cavanaugh told us it was a bad testing situation. Yet we were supposed to make a [183] decision on my son's life based

on a bad testing situation, admitted to by the psychologist, and which, I think emphatically I have to state, was the basis for the educational plan. We were told prior to any meeting where Michael was gonna be placed and that we were told that it was gonna be based on this psychologist's testing to the point that at that same meeting we were told that —

HEARING OFFICER: By whom did you — were you told this * * * was gonna be based?

MR. PANICO: Jean Aaron. Jean Aaron on May 25th. We were told at that same time that they wanted Michael out of the Memorial School. He should have been taken out earlier but they couldn't do it because it was the school closest to his home and now that they had this psychological report they could do it and they said Michael had Memorial School Syndrome. Mrs. Aaron then told me she was going to tell me something and if we were ever sitting across the table as adversaries she'd lie to it and Dick Cavanaugh said he would swear to it. She told me that Michael was ruined by Dick Barrows, that Dick Barrows the way he ran the school and the way he handled the Special Ed Program ruined Michael and he ruined many other kids. She told us why she wanted Michael in John MacAlair's class was to get him out of the Memorial School. Other reasons for rejecting it. I talked to my wife and I to John [184] MacAlair very briefly at the core meeting on June 4th not because he was sitting there and not because I observed him at the class, if anything that I saw good about the plan it was him. And that was the only thing that kind of made me still wonder as to whether or not we should maybe consider the plan but he also stated that it was the primary purpose of the class was for emotional adjustment problems and that he did offer a reading program but — you know, on an individualized basis, but he had seven or eight kids in the classroom and the primary purpose was emotional. He also — I also called John MacAlair in the summer in July

and talked to him on the telephone after I had gotten the doctors' results and I asked John MacAlair if now that he heard what the doctors had to say, that Michael did not have primary emotional problems, did he still feel that he could service Michael and he didn't give me a definitive answer as to whether or not he could service him but he did say that if Mike didn't want it there would be nothing he could do to help him. If Michael and the parents did not want it there would be no sense putting Michael in that class because he would get nothing out of it. I asked him if he had training in learning disabilities and he said he had minimal training in specific L.D. problems.

Also with regard to the educational program, I stated earlier Michael was supposedly at [185] level in math and other things but there was no provision for Michael to be integrated with the other children I think except in lunch and in some gym. But even in the physical education portion of it, Michael's a gifted athlete, a phenominal little athlete, and yet he wasn't even, he was even gonna have an adapted physical education. Also for three years we've received reports from Myra Fornier, teachers, etc. and no one ever suggested that Mike had an emotional problem to us or anything that might have interferred with his learning. We were told by teachers that he might have had a learning disability or we were told at the end of the first grade that he had a learning disability. We saw that Michael had improved when he was getting help under an educational plan prior to its being changed. We saw the improvements that were made, they're recorded within the school records by Jean Aarons, by the teachers, when he was under Mrs. Black for the full hour and I couldn't see anything in this plan that did anything to offer Michael a chance to be educated, all I saw it was a place to put him. I couldn't even rely on the emotional problem situation based on what the doctors had said because if he had this why wasn't he having

problems in all the other subjects. Also a Burlington Teacher, Catherine Black, was emphatic that we would hurt Michael by putting him in that classroom. Not only we wouldn't help him we would hurt him. She had had Michael for a year and a half and I had to rely an [186] awful lot on her. Based on all of that I just on the school's end of it I couldn't see that the plan was in any way adequate or appropriate. Besides the school records that we tried to use to examine the plan we also talked to Dr. Lot who was insistent that Mike's problems were a learning disability, not emotional, Dr. Levine, Mike's pediatrician, who thought it would be very harmful if we put Mike in with children who had emotional problems where he was so easily distracted, Dr. Isenthal who said Michael's emotional problems are consequential to learning and they — being in a class with disruptions would hurt him. He needs success in a classroom as normal as possible where everybody is like him. Peter Schoenfeld, Director of the Planning Disorders Unit at the MGH, when I explained the class to her, said that a dyslexic child needs a routine, he needs an ordered classroom, not a class where there are distractions nor anything that resembles an open classroom type atmosphere which Mr. MacAlair's class certainly is. He needs a routine, he needs everything ordered for him and he needs such repetition. He needs to be taught by people specializing in L.D.

Finally, I knew my son. Michael did not want it. This was presented to Michael in June that Michael might be going to the Pine Glen School. From the time it was told to him up until the time in August when we finally told him that he didn't have to go there it raised havoc with his life. I mean that sincerely. [187] He said it was a school for retards. He, like everybody else — child in the Town of Burlington, knows that the Pine Glen School, if a kid goes there from other than in the area he's going for a reason. He's going because he has a problem. Michael came home one time telling us that the kids

called him a weirdo because he was going to go to the Pine Glen School. He didn't want it. He told us he would run away. He told us he wouldn't go to school, he'd go back to the Memorial, he'd do anything. And here was the school telling us that he had an emotional problem and yet they were causing more emotional problems than they were even attempting to cure.

Finally, what Burlington had done in the past. They had a core, they never gave us an educational plan, we had to expend our own funds to have him te sted. We finally got a new core, a program was set up or Michael which was never followed, it was changed afte Michael was making progress, it was changed deliberately with the principal and the counsellor's knowledge. I had had assurances from Mr. Foley that Michael's plan wouldn't be changed but it was changed anyway. Why Mr. Foley even went so far as to give me his assurances in writing. And then it was changed. I saw Michael go — regress, his reading regressed. Michael regressed, he became constantly headaches. He suffered through two years as a result of the Burlington School System. Finally, I felt that, you know, we had blown it. [188] Michael had, if he was taken care of in the first or second grade, I think he had an 84% chance of being remediated or being correct, his problem. When you go to the fourth grade it drops down to 44% and I just couldn't wait till it went to the sixth grade when it drops down to 5% chance of success. Burlington had the problem, was aware of the problem, had a medical diagnosis in the first grade of dyslexia which is part of the core and did nothing about it. I feel they've ruined him and I couldn't accept their Educational Plan. There was nothing there that was gonna correct or help him and we had to make a decision, the decision was made that the Carroll School, what they could offer, was what Michael needed based on the most sound medical advice and educational advice I could get. I told you I talked to —

spoke with Sally Smith who wrote this book "No Easy Answers" who told me a class as I described it to her would kill him. He has to be in a classroom where there are no disruptions, where his whole day is ordered instruction. He can't be left on his own. He can't be left to work on his own if he is severely learning disabled. I think we've already stipulated to the fact that he is and based on that I had to reject the Educational Plan.

Q. Does the Educational Plan spell out any way for measuring how it's succeeding in the course of the year that it's established for?

[189] MR. BERMAN: Objection. The plan is * * *.

HEARING OFFICER: Do you want to reword that?

MR. GALLAGHER: All right.

Q. Do you also object to the Educational Plan because it does not spell out any way to measure its progress in the course of the year?

A. Yes. Absolutely. One of the things that —

MR. BERMAN: I believe the answer to the question was Yes.

HEARING OFFICER: I will allow the * * *.

A. The Educational Plan for Michael was very similar with the Educational Plan we received the year previously. It had objectives, primary and specific, but no measurement factor. This is what happened with his first educational Plan. We went through a whole year of being told Michael was improving, Michael was improving and at the end of the year we were hit over the head that Michael had regressed. Again at this time we were asked to accept the Plan with no measurement, nothing that we could see or any way we could measure whether or not Michael was improving. In fact that was one of the things brought up with Miss Aarons when she asked us to give the plan a year, try Mr. MacAlair's class for a year and if it didn't work then they wouldn't object to if we wanted to put him

in the Carroll School. But I couldn't take that chance in not [190] knowing whether or not he was going through another year of going through hell.

Q. Now Michael's been at the Carroll School for about six weeks?

A. That's correct.

Q. Do you have an opinion as to whether the Carroll School has been advantageous for Michael?

A. It's been phenominal for Michael.

Q. Now do you feel that as a father you've put undo pressure on your son over the years?

A. In the first grade I would have to say for the first three or four months of the first grade I did. I expected him to be like his sister. I thought he was gonna be — he always seemed very smart, and I thought he was gonna be extremely smart in school, yeah. I told him he was lazy, he didn't try, etc. up until probably around December or January of his first grade.

Q. What is your feeling about your son's failure in school?

A. Frustrated. I feel for him what he's gone through. It's very easy to sit here and say you know, the little boy doesn't know what he wants and everybody is gonna make the right decision for him, but nobody has to see him every day, my wife and I do. He's hated school. He's hated school from the first grade up until the present year. He come's home not wanting to go to school. He didn't want to go back to school. He's developed headaches, whether or not they are a result of the school or whether he would have developed them [191] anyway I don't know. He suffered immensely, suffered both physically and emotionally. When a little boy tells you that he'll run away or that he'd rather be dead or that life's not fair and he's only in the third grade, I'm frustrated. I'm frustrated that the Town did nothing and the Town was well aware of what was going on and did nothing about it.

Q. Now are you yourself active in youth activities in this area?

A. Yes I am.

Q. And what activities are you interested in, or active in?

A. I'm on the Board of Directors of the Burlington Hockey and Skating Association. For a couple of years I ran the Hockey Clinic and coached the Hockey Clinic in the skating * * * in the Town of Burlington and I've also coached in the Little League.

Q. Now is your wife also active in Parent Teachers Organization activities here in Burlington?

A. She was a, or she is a member of the PTO Board of Directors, she has been for a couple a years and she was an aide in the Burlington School Systems for I believe six years, prior to being on the Board in classrooms where our children were not.

Q. Does she presently have an activity in the volunteer program at the schools?

A. I believe as a member of the Board I think she runs the volunteer program for the Burlington School System [192] at the Memorial School.

Q. Now in the course of the years that your son had been in the school, were you ever told that he was a behavioral problem?

A. The one time in the second grade Janet Hannon I believe, at the conference, the second conference we had with her, I believe it was November and the year would have been I believe 1977, it was the second grade. When she told us Michael should go back to the first grade and we told her about the problems and she stated that he was also a discipline problem. I asked her what he had done, what she meant and I said was he fresh to you and she repeated no, but she did say he shuffled his feet, he shuffled papers, he daydreamed, he would tap a pencil on the desk, etc. He would get up and get drinks of water, he'd go the bathroom a lot, etc. and I said to my feeling I didn't consider that a discipline problem and

she said well she certainly did that it wasn't her job to control the children that way, he should know enough to sit at his desk and do his work.

Q. In September of 1977 and up to the end of the second grade did you make several phone calls to Miss Jean Aarons?

A. Yes I did.

Q. And what was the purpose of these phone calls?

A. In, I have to precede to June of the first grade, we had a core meeting and we were told Michael had a learning [193] disability which would be taken care of. The reason for our calling Jean Aaron in September was to clarify what grade Michael was going into and to make sure that he got the help. Again every subsequent call up to the March core was because we were under the impression that Michael had the problem and Jean Aarons was handling it. We called her. Dick Barrows had told us once we had the core that it was out of his hands it was now in Jean Aaron's hands and Jean Aarons always responded. It was my feeling that Jean Aarons was aware, was handling it. I think I even contacted Jean Aarons in December when Michael started — when we took him tc the MGH to Dr. Lot and I think you'll find notes in defense on the Town's exhibits stating that the call was made to her in December telling her that he was gonna be tested additionally, etc. We were under the impression that Jean Aarons was the person to deal with for a learning disability which we were told Michael had.

Q. Now how did you obtain the notes marked P-24 of May 18, 1979?

A. The notes consisting of three pages were obtained by me from Jean Aarons in August subsequent to a mediation hearing with Mr. Foley, Mrs. Aarons, yourself, myself and my wife were present. We went through Michael's Special Education Folder and took out the documents, asked for copies

of certain documents and we came to these three — there were three pages together, they had [194] an attachment with a persons name on the left hand corner which we've discussed but Jean Aaron said the notes didn't relate to Michael Panico. Because of the terminology in the notes they struck my attention. I asked her what they were. Jean Aaron said they were the notes of the May 18, 1979 meeting, core meeting, team meeting. We questioned the first page where we said they didn't apply to Michael and she agreed and said they were in there in error and they would be taken out. The second page relative to the needs for counselling Mystic Valley, flakes in and out in the process, etc. she said did not apply to Michael and the third page where I mentioned the top of the page where it says father telephone call with Mason and Miss Mead that I told her we never had any conversation on that date, a telephone call, and she said that's right, she had put that note there because she had wanted to call me relative to what Miss Mead and Miss Mason had stated on that date but she held them out all three, they were all together, they were all the same exact paper, and its the only paper like that I believe that was in the entire folder and they were held out to be the notes of the June, I mean the May 18, 1979 meeting. And she was emphatic that that's where they were, even to the point of telling me that the telephone call was something that she meant to make to me.

Q. O.K. Now on page three of that note the words on some [195] sort of doodle on the right hand side appear, Landmark Carroll.

A. That's correct.

Q. When was the first mention that you made of putting your boy in the Landmark or Carroll School?

A. I never mentioned to Jean Aaron prior to May 25th when we met with Mr. Cavanaugh. This was brought up, Landmark and Carroll was brought up either during or immediately after

the May 18th meeting. It was brought up by the — where the Landmark or Carroll came from was one of the teachers. Now whether it was said to us during the meeting itself or it was said immediately after, I don't recall. Miss Mead and Miss Mason, we were there discussing it. We were discussing it with both of them together and individually, we also discussed it with Catherine Black after the meeting but whether or not it was discussed during the meeting or after I cannot be sure.

Q. Did Miss Mead or Miss Mason ever recommend John MacAlair's class? Or did they recommend it on May 18, 1979?

A. On May 18 Mr. MacAlair's class was never discussed. In fact, on May 18 all Miss Mead and Miss Mason ever said was they had no idea what Michael's problem was. One of them even went so far as to tell us that she knew a psycho-neurologist who could possible help because memory was something they didn't know too much about and maybe it was something that happened in the past. [196] You know, a long thing went on because of the issue with memory but nothing about emotional or John MacAlair's classroom as a matter of fact was ever discussed.

HEARING OFFICER: Is that the end of the direct?

MR. GALLAGHER: That's the end of the direct, yes.

(EXAMINATION OF ROBERT A. PANICO BY DAVID BERMAN)

Q. Mr. Panico, where did you first hear the name John MacAlair?

A. May 28th of this year.

Q. And isn't it a fact that at that time Mrs. Aaron suggested that you make an appointment to go to Mr. MacAlair's class?

A. Yes she did.

Q. And did you go to Mr. MacAlair's class?

A. No I did not.

Q. In fact you didn't go to Mr. MacAlair's class, did you, until after you had placed your child in the Carroll School?

A. That's correct.

Q. * * * Mr. MacAlair's class you had signed a contract with the Carroll School?

A. That is correct.

Q. And under that contract you were obligated to make certain payments to the Carroll School, is that not correct?

A. That is correct.

[197] Q. And under that contract you were obligated to make certain payments to the Carroll School, is that not correct?

A. That is correct.

Q. And how much were those payments sir?

A. Approximately $3,500 at that point.

Q. And that would be true even if you took Michael out of the Carroll School at that point?

A. I would think so, I don't really know but I think it would just stand to reason, yes.

Q. And you will agree with me, will you not, that at the time you went to Mr. MacAlair's class you went to the class to see why that class was not going to be satisfactory for your child?

A. No I did not.

Q. You went there with an open mind, didn't you sir?

A. Absolutely.

Q. And you were prepared to come back in today to testify that the class was suitable even though you had already committed yourself to paying money to the Carroll School if you found it suitable, isn't that right?

A. I wouldn't have wanted to, but I would have.

Q. Where were you born sir?

A. Boston.

Q. What part of Boston?

A. I have no idea.

Q. Where did you live? During the first five or six years of your life?

[198] A. Medford.

Q. Where did you go to high school?

A. Malden Catholic.

Q. And where did you go to elementary school?

A. In Malden, Immaculate Conception.

Q. Junior high?

A. There was no junior high that was grades 1 through 8 and then High School 9 through 12.

HEARING OFFICER: How * * * is this relevant?

MR. BERMAN: I want to get the background of this witness.

Q. And did you go to college?

A. Yes I did.

Q. Where did you go to college?

A. I got my Bachelor's Degree from Boston University, Master's Degree from Suffolk, and accounting credits came from Boston University and Metropolitan College and other advanced courses at Boston University.

Q. What did you get your Bachelor's in?

A. Business Administration.

Q. And your Master's?

A. Business Administration.

Q. And are all your advanced degrees in business administration?

A. Not advanced, they are not degrees the other courses, they're in accounting and * * * economic theories.

[199] Q. And by whom are you employed?

A. Treasury Department I.R.S.

Q. In what capacity?

A. Supervisory Criminal Investigator.

Q. How long have you been employed there?

A. Fifteen years, almost fifteen years.

Q. Do you have any people work under you?

A. Yes I do.

Q. How many?

A. Fifteen-eighteen. Approximately fifteen right now.

Q. And do any of these people have people working under them, those fifteen people?

A. Not really, no.

Q. And its fair to say, isn't it, that the people you — who work for you you're accustomed to their carrying out your orders?

A. Yes.

Q. Now you were disappointed, were you not, when Michael didn't do well in the first few months of elementary school?

A. Absolutely.

Q. And you wanted to find out why he didn't do well?

A. That's correct.

Q. And your other, your daughter had done well in elementary school, had she?

A. Yes she did.

Q. And your son had done well in elementary school?

A. He wasn't in elementary school.

[200] Q. Hasn't been in elementary school yet?

A. No he is now but he hadn't been at that point in time that you're referring to, the first grade.

Q. And would it be fair to say that the — after the first four months when Michael wasn't doing very well you thought that maybe there was — maybe the school was at fault?

A. Not at all.

Q. Well who'd you think was at fault?

A. Michael.

Q. You said the first four months you thought he was at fault, isn't that right?

A. Yes I did.

Q. Well what did you think after the first four months?

A. After the first four months I thought there was a problem with Michael. I thought he had a problem.

Q. What kind of problem did you think he had then?

A. I didn't have the terminology for it, I felt it — there was something prohibiting him from learning, there was something interferring with the learning process.

Q. All right. When did you present the teacher with the book Square Holes, Round Pegs?

A. I never presented a teacher with it at all.

Q. Who'd you give that book to —

A. I didn't give it to anyone.

Q. Never had — did you ever suggest that that book be read by someone?

A. Yes I did.

[201] Q. Who'd you suggest it to?

A. I suggested it to Mr. Foley.

Q. To Mr. Foley.

A. That's correct. Not that he read it, that it be given to the teachers. I offered to buy it.

Q. Which teachers did you think it should be given to?

A. All of them.

Q. And what did Mr. Foley say to you when you made that suggestion?

A. I don't recall. It wasn't accepted but I don't recall what he said relative to the suggestion.

Q. Did you make that suggestion as a perfectly straightforward suggestion sir?

A. I made it out of concern. I felt that after I read the book and I'd read a couple of others at that point in time I felt that maybe people weren't as familiar with it as they should be, especially teachers.

Q. You felt you were something of an expert on the educational system, didn't you sir?

A. Not at all.

Q. You were going — you were suggesting to Mr. Foley that his teachers should read certain books weren't you?

A. I suggested that book should be read, yes.

Q. Now did you ever show the educational plan of the Burlington School to Dr. Lot?

A. Yes he's seen it.

Q. When did he first see it?

[202] A. At the hearing here.

Q. Did you show it to him sir?

A. No I didn't.

Q. All right. In fact the answer to my question Did you ever show the plan to Dr. Lot was no, isn't it? You never showed it to him.

A. No, I did show it to him. I discussed it with him after — o.k. I did not show it to him prior to this hearing, no.

Q. And its fair to say that you were surprised when Dr. Lot was shown the plan by me were you not?

A. Not at all.

Q. And were you surprised when Dr. Lot said that the plan was a good plan?

A. I didn't hear that testimony.

Q. You didn't hear that testimony.

A. I don't believe that was his testimony.

Q. Did you show the plan to Dr. Levine?

A. No I did not.

Q. Did you show the plan to Miss Shoenfeld?

A. No I did not.

Q. Did you show the plan to Dr. Isenthal?

A. No I did not.

Q. Did you show the plan to Sally Smith?

A. No I did not.

Q. So you've discussed Michael with all of those people but you never showed any of those people Michael's educational plan, isn't that correct sir?

[203] A. I was not given the educational plan by the Town of Burlington when I talked to them. They were late, I had nothing to show them.

Q. I see. When was the last time you talked to Dr. Levine, sir?

A. Oh, maybe about a week and a half ago.

Q. When did you get the educational plan?

A. I got it in June. July, I'm sorry. I think — June or July, the 28th of —

MR. BERMAN: The 28th of June wasn't it sir?

A. The 28th of June. I'll make sure.

Q. Well now tell me, how many times after June 28, 1979 did you talk to Dr. Lot?

A. I don't recall. Possibly two, prior to the hearing that I talked to him.

Q. And how many times after June, 1978 did you talk to Dr. Levine?

A. Possibly once that I know of.

MR. GALLAGHER: Since June of 1978?

MR. BERMAN: June, 1979.

A. Once.

Q. And was that time to ask him for this letter that was given up to us today?

A. No at that time I called him and asked him if he would be willing to testify, was he familiar with Michael, was he familiar with the testing that had been done, did he have expertise in this field, and would he be [204] willing to testify and/or provide a statement and he said yes.

Q. Did you ask him whether he would testify?

A. Yes I did.

Q. And what was his answer to that?

A. That he wouldn't.

Q. And are you making arrangements to bring him in as witness.

A. No I'm not.

Q. And will you explain why not?

A. On advice of counsel we are not bringing him in.

HEARING OFFICER: This is Dr. Levine you're referring to?

MR. BERMAN: This is Dr. Levine.

Q. Now when did you last see Dr. Lot?

A. The date of the hearing.

Q. That was September 10, 1979 I believe, was that correct?

A. That's right.

Q. And how long after the — did you see him after the hearing?

A. Well maybe for about ten minutes.

Q. Have you talked with Dr. Lot on the phone?

A. No I have not. I'm sorry. Yes we — I didn't. I don't know if it was myself or my wife. I put a call into him, I believe my wife talked to him, I didn't.

Q. All right, when was that sir?

[205] A. Probably a week or so after the hearing.

Q. And did you listen while your wife talked to him?

A. No I didn't.

Q. But you made the call?

A. I called originally, that is correct.

Q. And you handed the phone to your wife, is that correct?

A. No, no. I called he was not in. When he called back he talked to my wife.

Q. Did you find out from your wife how long the phone call was?

A. No I never did.

Q. Well why did you call Dr. Lot a week after the hearing?

A. It was because of Michael's headaches. And he called to the — Michael's medication is being changed pretty regularly and diets, that sort of thing etc. It was just a matter of calling him relative to Michael's physical and I don't think this thing was at issue at all.

Q. Oh wait a minute. Is it your testimony sir that one week after this hearing, that is on September 17, 1979, Michael was still having headaches?

A. Michael has had headaches since he's been seven years old.

Q. He's having them right now, isn't he?

A. The last three or four weeks they've been super, no. * * * occasionally yes, he will have a headache. He'll have a minor headache. They are minor now and when they get bad they ease up.

[206] Q. And you called Dr. Lot on September 17, 1979 to talk about Michael's headaches, is that right?

A. I don't recall the date, I said —

Q. Around that time.

A. Around that time, yes.

Q. All right. Now did you ever call Dr. Lot to talk about your objection that you've testified to today to the Burlington Educational Plan for Michael?

A. No I did not.

Q. Did you ever call Dr. Levine to tell Dr. Levine about your objections to the Burlington Educational Plan?

A. No I did not.

Q. When did you first learn about the program at the Pine Glen School sir?

A. That would be May 25, 1979.

Q. And up until that time you did not know that there was any such program at Pine Glen, is that correct?

A. I'd have to say no because I — you know, a specific program no I didn't.

Q. All right. It's fair to say that prior to May 25, 1979 you had never heard that there was a program for children with emotional problems or learning disabilities at the Pine Glen School?

A. Oh no, I was well aware that there were classes up there for children with emotional problems.

Q. You were aware of that prior to March 25th?

A. Yes sir. Yes I was.

[207] Q. And how long had you been aware of this?

A. Oh, maybe a couple of years.

Q. You were aware of this from about 197 — you were aware of this from mid 1977 onward?

A. I said a couple of years. It could have been '75-'77. I don't recall exactly, I was aware. That there were special classes up there and emotional was one of them, yes.

Q. And what had you heard prior to May of 1977 about those special classes there?

MR. GALLAGHER: I think a question that's a little bit broad, isn't it? Why don't you —

Q. What did you hear? I want to know what you know about it?

A. Prior to 1977 I —

Q. I'm sorry, prior to May of 1979?

MR. GALLAGHER: What did he hear or what did he know?

MR. BERMAN: What did he hear? Hear.

Q. What did you hear about it?

MR. GALLAGHER: That's too broad.

HEARING OFFICER: * * * a bit. How can he manage to repeat conversations that he may have had * * *.

MR. BERMAN: I just want to find out what he heard.

Q. What did you hear about those classes at Pine Glen School.

A. You're saying particular classes. I can't answer it as a class I can answer that I was aware that the Pine Glen [208] had serviced children with problems. That it had classes for children with several different kinds of problems. I was aware of that as a resident of Burlington. There were newspaper articles that you read that a lot of things reflective of the fact that Pine Glen catered, at least a lot of programs were involved at the Pine Glen.

Q. Did you hear derogatory remarks made about children who were in those programs?

A. No.

Q. Did you hear derogatory remarks made about the programs themselves?

A. No.

Q. Now do you think its possible sir, that anything you may have said during and prior to the summer of 1979 gave Michael the impression that the Pine Glen School was not a very desirable place to go?

A. Absolutely not.

Q. Impossible that these things had happened?

A. Impossible.

Q. And your opinion is that if Michael got a bad impression of going to the Pine Glen School he picked that up from other children, is that right?

A. Absolutely.

Q. And certainly not at home?

A. No he didn't get it from myself and my wife, maybe from my children.

MR. BERMAN: Excuse me?

A. Maybe from my other children, that I don't know.

[209] Q. Have you asked your other children?

A. No I didn't.

Q. Did you ever — strike that. You asked Mr. MacAlair at some point whether he could do anything for Michael, is that correct?

A. That is correct.

Q. And what did Mr. MacAlair say to you?

A. He was asked that question twice.

Q. When was the first time you asked him?

A. The first was in the summer of 1979.

Q. All right. What — and this was by telephone?

A. Yes it was.

Q. And you called him at home sir?

A. Yes I did.

Q. And how'd you get his home number?

A. I think I just looked up John MacAlair in the telephone book. I called a number and somebody said he's, this isn't him and he's in Medford, if I'm not mistaken, the one you want. I called and asked is this John MacAlair the teacher in Burlington?

Q. And did you introduce yourself when you called?

A. To Mr. MacAlair, yes I did.

Q. And what did you — what did Mr. MacAlair — what did you say to Mr. MacAlair and what did he say to you in that conversation?

A. To the best of my recollection I think I told Mr. MacAlair that I was rejecting or thinking about rejecting the educational plan as proposed. I told him it was [210] nothing personal. I explained that we had talked to — Michael had been examined by Dr. Lot, Dr. Isenthal and we had input from the Learning Disorders Unit at the MGH. My first question to him was if knowing that he has — if I were to tell you that the doctors diagnosed it was emotional problems were secondary and not primary, that Catherine Black said he didn't belong there, he had a severe learning disability, would you still feel that that was the best place for Michael. He did not to the best of my knowledge say yes or no or anything to that effect at that question. I think he kind of maybe gave me a vague answer or maybe he couldn't answer, I don't recall. I then asked — then we talked about his class. I asked about his background — was it in learning disabilities. He had advanced courses beyond his Bachelor's and I believe that he had one, the way I remember it, maybe one, maybe two specific courses in learning disabilities and the others weren't. The others were advanced courses in maybe children with problems but not specificly dyslexia. And he also did tell me though it was something the parents and the child would have to want. He works very closely with the parents and the child and he said if

Michael, and I told him of Michael not wanting to go, the fact that he was crying about it, the kids were calling him weirdo and retard because he had to go to that school, that you know, would that effect, would he still be able to help Michael and his answer to me was if the boy or the [211] parents don't want it there would be nothing he could do to help him. They both had to want it for it to be a success.

Q. Do you think sir that would apply to the Carroll School as well?

A. I would say —

MR. GALLAGHER: I'm sorry I don't understand the question at all.

Q. Do you believe sir that that would apply to the Carroll School as well?

MR. GALLAGHER: I don't believe that asking the question louder resolves an objection.

HEARING OFFICER: All right. Is your objection related to the question?

MR. GALLAGHER: Well the last question was what was the nature of the conversation between MacAlair, Mr. MacAlair and Mr. Panico over the phone. There's some answer from Mr. MacAlair, a summary of conversation and then the question is that does that apply to the Carroll School as well. Does what part of the conversation apply to the Carroll School?

MR. BERMAN: All right.

Q. Do you believe sir, since you've testified at some lengths to your beliefs, that the statement that the child will not succeed in the school unless the parents and the child wanted it applies to the Carroll School as well?

MR. GALLAGHER: I would like to interpose another objection. He is quoting from what — [212] Mr. Panico's quote from Mr. MacAlair —

MR. BERMAN: Yes, I know that and I —

HEARING OFFICER: All right. Is the question that you want to ask of Mr. Panico the question that does Mr. Panico

believe that the desire of the parents that the child have successful periods at Carroll that they be interested in the child's success at Carroll.

MR. BERMAN: That's right.

HEARING OFFICER: O.k. You may answer.

A. I absolutely believe that if both people want something or the child wants it especially its gonna have an effect on how he learns.

Q. So you would agree with me, wouldn't you, that there was nothing that Mr. MacAlair said regarding the effect of the child desire or the parents desire that took you by surprise?

A. Yes it did.

Q. It took you by that — you were surprised when Mr. MacAlair said that his class wouldn't work if the child or the parents didn't want it?

A. Yes I was.

Q. Because you were of the opinion that Mr. MacAlair should have said I will succeed with this child whether he wants to learn or not and whether you want him to be here or not, isn't that what you expected him to say?

A. Not at all.

[213] Q. Well would you explain why you were surprised when he said it?

A. I was surprised because Mr. MacAlair had told me, had told us previously in June and we had been told by other school personnel that the class was for emotional children and I was surprised when — that a class for emotional children that he would say that if the child didn't want it or the parents didn't want it that it would have an effect. If the child had emotional problems he probably would have no idea what he wanted and I was kind of surprised by the answer.

Q. Did you think Michael had emotional problems sir, during the year 1979?

A. Yes.

Q. Do you think he had emotional problems during the year 1978?

A. Yes.

Q. Now in the course of the three years you're saying that no one ever told you except the second grade teacher that Michael had a behavior problem?

A. That is correct.

Q. And as far as you were concerned when — was it Mrs. Reba that told you it was a discipline problem?

A. No. Mrs. Reba was first grade. Mrs. Hannon. Judith Hannon.

Q. Hannon. What grade did she —

A. Second grade.

[214] Q. And she told you that Michael was a discipline problem, is that right?

A. She did on one occasion, yes.

Q. And you asked her what the nature of the discipline problem was?

A. Yes I did.

Q. And she told you, didn't she?

A. Yes she did.

Q. And you didn't think that was a discipline problem, is that right?

A. That's correct.

Q. When you were in school were you permitted to shuffle papers at your desk at will?

MR. GALLAGHER: * * *

HEARING OFFICER: I think perhaps if * * *.

Q. Would you explain why you didn't think those problems that she eluded to were disciplinary problems?

A. Because at that point in time I felt that that would be normal for a child who wasn't learning, was struggling learning to be very easily distracted, to be more intent on shuffling papers, shuffling his feet, looking out the window than paying attention.

Q. And getting up and going to the bathroom?

A. Getting up and going to the bathroom.

Q. You thought all these things would be normal for Michael's behavior?

[215] A. I thought that would be very normal for a child that had Michael's problems.

Q. And therefore you considered that they were not disciplinary problems, is that correct?

A. That is correct.

Q. Did you look at Mr. Cavanaugh's report which has been marked as an exhibit here? P-9?

A. Yes I did.

MR. BERMAN: I don't think P-9 however is the report I want.

MR. PANICO: P-40.

MR. BERMAN: Yes, P-40 is right.

Q. I'd like to direct your attention if I may to the words test situation that appears on the first page of that exhibit. Would you turn your attention to that?

A. Um hmm.

Q. Now would you read out loud the last sentence under that please?

A. Except for the time factor, two hours with only a short break, and his concern about missing the first few minutes of his class recess, the test situation was good.

Q. Now did you ever point out to Mr. Cavanaugh that he had made that statement?

A. I never saw Mr. Cavanaugh again after the May 25th meeting.

[216] Q. Didn't you talk to Mr. Cavanaugh on the telephone sometime after the May 24th meeting?

A. No I did not.

Q. When did Mr. Cavanaugh tell you that the test situation could have been better?

A. He told us on May 25th the day he discussed it. On May 25th we were not in possession of this document. He told us the test situation was bad and he told us why and it's certainly not reflective of what's written here.

Q. Well now after you got this document — when did you get this document by the way, its marked p-40.

A. If I had a calender I could tell you. This I believe was a Friday, May 25th, and I believe we picked it up on a Monday or the Tuesday, we asked that it be ready so we could bring it to Dr. Lot so it was within a couple of days, maybe one or two workdays.

Q. O.K. after you got this document did you try to call Mr. Cavanaugh again?

A. No I did not.

Q. Did you ever attempt to try to find out what Mr. Cavanaugh meant when he said the test situation was good except for certain problems that he mentioned?

A. No I did not.

Q. Did you read the plan that was given to you by the Burlington Public Schools in its entirety?

A. I sure did.

[217] Q. How many times have you read it?

A. Maybe twenty.

Q. Now I'd like to direct your attention, if I may, to the page of the Plan that begins Learning Style Physical Constraints.

A. Um hmm.

Q. I'd like to direct your attention to the first sentence if I may, in that paragraph, the first paragraph on that page, and I'm going to read it and I'm going to ask if I've read it correctly. Michael is an eight year-five month old boy in the third grade. Did I read that correctly?

A. You sure did.

Q. Is the statement correct?

A. I don't know. At the time I wouldn't know if he was eight months, five years or eight years-five months. I'd have to go back and —

MR. BERMAN: Have to go back and check it.

Q. Well why don't you go back and check it and tell me if that was correct?

HEARING OFFICER: Counsellor, I really don't see anything conceivable * * *.

MR. BERMAN: O.K.

Q. His general mental ability has been measured as, is that high average? It doesn't show on my — High average or superior on various assessments with no significant differences noted between his verbal and non-verbal scores. Do you agree with that statement?

[218] A. I'm sorry?

Q. Do you agree with that statement sir?

A. I can't agree or disagree with it to be honest with you.

Q. No basis for agreeing or disagreeing is that right?

A. No as far as its been measured his high average, that's correct, superior he is, that's correct, on various assessments with no significant differences noted between verbal and non-verbal scores. That part I can't tell you offhand, I'd have to look it up in the test results and tell you if there was a difference. I believe it's correct that there is minimal difference between the verbal and the non-verbal.

Q. Testing indicates adequate performance in expressive and receptive language processes. Do you know what that sentence means sir?

A. No I don't.

Q. Have you ever asked anyone what it means sir?

A. No I did not.

Q. And you've read this report twenty-five times, is that right?

A. Um hmm.

Q. Now in most areas he scored above his chronological age with one exception of auditory attention span for unrelated words on which he scored 7 years, 9 months.

A. That's correct.

[219] Q. All right, Michael performed satisfactorily in a third grade classroom, however he had difficulty remembering on a day-to-day basis skills previously taught. Do you agree with that sentence?

A. No.

Q. All right. How do you disagree with that sentence?

A. With everything in it. He certainly didn't perform satisfactorily in the third grade classroom.

Q. Do you think that that statement is wrong that he performed satisfactorily in a third grade classroom?

A. Absolutely. And the rest of it's wrong also.

Q. You don't think he had difficulty remembering on a day-to-day basis skills previously taught?

A. Certain skills, yes. Certain types things he'll forget, other things he'll remember. The statement every day automatically * * * the way its read.

Q. All right. Tell me what school skills would you say that he remembers when they are previously taught?

A. Math skills.

Q. Math skills.

A. Um hmm. Gym, areas of physical education. There's various things he remembers on a day-to-day basis.

Q. Well tell me about them.

A. I can't put my finger on them. You're saying remember on a day-to-day basis. If I show him how to do something at home he remembers it.

Q. Well what do you show him how to do that he remembers?

A. Play ball.

[220] Q. Play ball. All right these are physical skills.

A. But as far as being able to remember on a day-to-day basis skills previously taught you're talking about — see it depends on the type of skills. You're talking maybe reading skills, I don't know that because I don't know what they've taught him the day before.

Q. So you don't know whether that statement is basically right or basically wrong if it applies to verbal skills, is that right sir?

A. That's correct.

Q. Now, by the way, talking about math skills, when you were at the Carroll School Michael was doing simple subtraction and simple addition, is that correct?

A. That is correct.

Q. Do you think Michael was capable of doing better than that?

A. Not much, no.

Q. Do you know what his mathematical score was on his tests?

A. I know what Burlington reflects it as and that's not the way I see it.

Q. You don't. Have you ever given him a test in math?

A. No I haven't.

Q. Did you ever find out whether or not there was a possibility or — strike that. One of your criticisms, was it not, of the Burlington Plan was that it didn't provide for Michael to take math at his own level, is that right?

[221] A. That was one of the criticisms I said based on what the school had said. You see they had contradictory statements. The school in one instance was saying that he was at grade level and in another instance on an educational plan they were putting him in a class where he was gonna be out of the classroom, out of the normal classroom in math. I said they were inconsistencies, I could not rely on the plan.

Q. Now did you speak to Mr. MacAlair about his math in the summer of 1979?

A. No I did not.

Q. Did you speak to Mrs. Aaron about his math at any time in the summer of 1979 or the spring?

A. I'd have to answer that by saying I made an attempt to sit down with the Burlington School Department on several instances to go over his educational plan and to try to, well lets say mediate his plan that I wasn't happy with and it wasn't done.

Q. Did you speak to Mrs. Aaron about his math in the summer or the spring of 1979?

A. About his math in particular, no I did not.

Q. Did you speak to Mr. Foley about his math in the spring or summer of 1979?

A. No I didn't.

Q. Did you ever ask whether it would be possible and if Michael were in MacAlair's class for Michael to take math with his peer group?

A. No I didn't ask that.

[222] Q. And you don't know as of today whether that would be possible, is that correct?

A. I'd have to say — yeah, I can answer that. I can answer that the way the class was explained to me it was not possible because Michael's problems were not academic they were emotional and he belonged in a classroom with emotional children.

Q. And its fair to say that at the time that you read Michael's plan it was your understanding that Michael would not be able to take math with his peer group, is that correct? That was your understanding.

A. I said the plan did not call for it, I didn't say whether or not I didn't feel that I could go up and make him take his — I'm certain that I could have gone up and said I wanted him

to have math with his class and I would have been entitled to have that. I had told you what the plan showed, not what my understanding of the plan was.

Q. All right. Now I want to make sure I understand. Is it your understanding sir that if you had asked that Michael be allowed to take math with his peer group he would have been allowed to take math with his peer group, is that correct?

MR. GALLAGHER: * * *. The question is based on a * * * that has never occurred.

MR. BERMAN: Shall I justify the question, I can, many times over.

[223] HEARING OFFICER: Why don't you justify it briefly.

MR. BERMAN: All right. We've listened for hours on end to hearing this man talk about the math program and hearing him talk about the plan. I want to point out how much he understands about this plan. This is a plan that he rejected because it wouldn't provide for math. Now I'll warrant there will be evidence before this hearing is over that math is one of the subjects that Michael would be taking with children who do not have learning problems or emotional problems if he were in the Pine Glen School and I want to find out if Mr. Panico knows that or not.

HEARING OFFICER: O.k. Is your question then is he aware that that was a provision of the plan or that it could be if he had indicated? * * *

MR. BERMAN: My question is did he know whether or not that would be done.

HEARING OFFICER: O.K. Why don't you ask it that way then?

Q. Do you know whether or not Michael would be taking math with his peer group?

A. Under his educational plan he would not.

Q. Did you ever ask anyone whether he would be?

A. I had an educational plan which I examined. You are asking me question on the educational plan. The educational plan calls for Michael to have math with John MacAlair.

[224] Q. Did you ever ask anyone whether or not he could be taking math with his peer group?

A. I was denied the chance.

Q. Who denied you the chance to ask that question sir?

A. Mediation. I had an educational plan which I rejected. I tried and attempted to sit down with mediation and was refused.

HEARING OFFICER: O.K. Are you saying in fact that you did not initiate a conversation with the group about the possibility of Michael taking math in the regular classroom?

MR. PANICO: In specifics of math, no I didn't. I tried to initiate regarding the plan, but not in regard to math in particular.

HEARING OFFICER: O.K. Does that answer your question?

MR. BERMAN: Yes.

Q. O.K. Now let me direct you to the next sentence in this paragraph Learning Styles Physical Constraints. Although Michael's oral reading is slow and labored he demonstrates the ability to use context clues for self-correction and is able to comprehend many ideas and detail from selected passages. Do you agree or disagree with that?

A. Partially both. Mike's oral reading is slow and labored to the point of almost being non-existent. The ability to use context clues for self-correction yeah, I think anybody can do that, you know, a car doesn't sail down a river you know, so you can do it [225] that way. To comprehend the main ideas and details from selected passages I find it extremely hard to believe unless it's one short passage.

Q. Let me ask you this. Did you ever discuss this plan with Catherine Black?

A. No I did not.

Q. Are you — did you ever ask Catherine Black whether or not Michael was able to comprehend main ideas and details from selected passages?

A. Yes. We discussed that.

Q. And what did she tell you?

A. She told me he couldn't.

Q. And did you think she was telling you the truth then?

A. Absolutely. And I clarified that by saying on minimal paragraphs and minimal — very short paragraphs he could comprehend, but if you gave him fifteen paragraphs over a period of three or four pages he'd have no idea what you were talking about. Or what he was reading.

Q. Limited sight vocabulary hinders oral fluency for appropriate level reading materials. Do you agree or disagree with that?

A. I agree with that.

Q. All right. Michael relies on word configuration rather than focusing on letters. Do you agree or disagree with that?

A. I can't agree or disagree with that. I don't know really what Michael relies on when he's trying to read. I don't think anybody does.

[226] Q. Michael's visual integration problem causes him difficulty in processing the syllable into a whole, thus his weak visual memory for whole words limits his word recognition skills. Do you agree or disagree with that?

A. I can't agree or disagree with that context with that sentence. It's nothing more than a * * *. No I just can't agree or disagree.

Q. O.K. Although Michael's short term visual memory task performance is good exposure up 10 seconds, a longer exposure time results in poor visual memory performance. Do you agree or disagree with that?

A. I don't know. As far as his memory task performance being good on a short exposure time I don't know. As far as a longer exposure time resulting in poorer visual memory performance that would be true of anybody in the world, I'd assume.

Q. He presently results in — he presently is unable to use his word attack skills spontaneously. Do you agree or disagree with that?

A. Yes.

Q. You agree with that?

A. Um hmm.

Q. Because of his distractability and limited attention for tasks completion, supervision is necessary for successful completion of prescribed tasks. Do you agree or disagree with that?

A. Yes and no again. If the work — he is distractive. But supervision being necessary is not a prerequisite to [227] completion. The — if the distractions are taken away he can complete. I don't think he has to have somebody standing over him to do it. However he has to be free from distractions that much I'll agree.

Q. Is he receiving supervision in the Carroll School for completion of his tasks, his academic tasks?

A. The same supervision that any other child in the school. He has a teacher, yes.

Q. And how many other children does that teacher have?

A. Depending on the class, five or six, four.

Q. And would you consider that a situation in which a child has supervision for completion of tasks?

A. Yes, there's supervision but I'm saying it's not what you asked me. You're saying supervision is necessary for the successful completion of the prescribed task. If you're saying somebody has to be in the room, yes I would say possibly. Is somebody standing over him, I'm saying I —

Q. So you say it depends on how you define supervision.

A. Absolutely. Degrees of supervision —

Q. And you say that the — it's adequate supervision that someone, the teacher, is in the room. The teacher doesn't have to be standing over him, is that what you're telling me?

A. No. Wait a minute. The supervision has got to be there, there's no question. O.K. He needs supervision. I'm saying he does not need somebody standing over him for eight hours a day, absolutely not. But he does need somebody standing over him making sure he's [228] doing his work.

Q. Activities fostering the development of independent work habits should be encouraged. Do you agree with that or disagree with that?

A. I agree with that for everybody.

Q. Michael enjoys reading material relating to animals. Do you agree or disagree with that?

A. I disagree.

Q. Have you ever tried * * * reading material relating to animals?

A. Yes we have.

Q. Did you ever ask Catherine Black whether or not Michael enjoyed reading materials relating to animals?

A. No. I can tell you you're miswording something. Michael enjoys animals. O.K. And he enjoys hearing about animals. Michael doesn't enjoy reading and at this point he'd enjoy reading anything.

Q. Would you be surprised to learn that it is Mrs. Black's opinion that Michael enjoyed reading materials relating to animals?

A. I think you'll find its Mrs. Black's opinion that Michael enjoys the material relating to animals. You asked me about reading. I said he didn't enjoy reading period. The materials relating to animals Michael enjoys, there's no question about it.

Q. Doesn't this say here that Michael enjoys reading material relating to animals? Isn't that what I said?

A. Well I was reading it as Michael enjoys reading material relating to animals. Not reading materials. I'm not [229] trying to spar with you. If you say —

Q. Then you say that if reading is an adjective in that case then the sentence if right. But if you say it's a gerund it's wrong, is that right?

A. O.K. I'll go along with that. Yes. I wasn't trying to — I was being very serious in that matter. Yes, things relating to animals Michael would enjoy. Being read to him or trying to read it himself on occasions.

Q. Michael's handwriting needs continued reinforcement for neatness and form. Do you agree —

A. Absolutely wrong.

Q. You don't think it needs continued reinforcement?

A. Absolutely wrong. The one thing that Michael did was write neatly. At least the papers that we've saw.

Q. All right. Michael has a positive self-image regarding his body and confidence in sports activities. Do you agree or disagree?

A. I disagree. This is something we might have mentioned that Michael at least feels he's a pretty good athlete and he was a pretty good athlete and because of that, maybe. But his image, which we found out at the time this was going on, Michael's self-image was pretty low about everything.

Q. You think his self-image about his body was low, but agree that he was a good athlete, is that right?

A. He's a super athlete but he had, even as far as athletic abilities he had a poor image of himself, he thought he stunk in everything he did, even when he was the best.

[230] Q. Michael perceives that adult and peer expectations for academic performances are beyond his reach.

A. I think that's, somebody devised that statement. I don't know where it came from.

Q. You don't think its true?

A. I don't know if its true. I'm saying I don't know. Someone devised it or whether its true or not I don't know. I don't know what he perceives of his expectations.

Q. The perceived negative attitudes concerning academic competence contributes to his questioning his self worth and causes him to become anxious, sad and angry. Do you agree or disagree?

A. No, I don't agree with that.

Q. Now lets find out what part of that you disagree with.

A. I don't agree with any of it.

Q. Well first of all you agreed that he has perceived negative attitudes concerning his academic competence is that correct?

A. I agree that anybody who is not learning is gonna perceive — is gonna have negative attitudes about his own competence —

Q. So you agree at least that he has perceived negative attitudes about his academic competence?

A. Yes.

Q. Now do you agree that those academic — that perceived negative confidence contributes to his questioning his self worth?

[231] A. I don't, I almost have to say no I don't.

Q. You don't think it does?

A. Up to the self-worth, possible. But then causing him to become anxious, sad and angry, I'd have to say no.

Q. You don't think that, your opinion, although these things contribute to his questioning his self-worth, they don't cause him to become anxious, sad or angry.

A. I just think its a bad choice of words, anxious, sad and angry.

Q. Do you disagree with the statement?

A. Yes the words anxious, sad and angry.

Q. Now let me ask you, have you ever seen Michael anxious?

A. Oh yes, I've seen him anxious many times.

Q. More so than your other children?

A. Yes.

Q. Have you ever seen Michael sad?

A. Absolutely.

Q. More so than your other children?

A. No. Oh, I'm sorry, I mean yes.

Q. What about angry? Have you ever seen him angry?

A. Um hmm.

Q. Would you say more so than your other children?

A. Yes.

Q. But its your opinion that the anxiety, the sadness and the anger that you've seen are not related to his negative attitudes concerning his academic competence or his questioning his self-worth, you don't think they're related?

[232] A. I'm saying I don't think the statement perceived negative attitudes. I don't know what Michael perceives as far as how — why he questions himself or anything. What I'm saying is he's questioning even in sports and he's a super athlete. I say concerning academic competency, I don't know, I can't answer it. I say the words anxious, sad and angry are wrong. Cause him to become that. I think Michael is that way whether at school or not right now. He's been pushed to that point.

Q. You think he's sad, angry and anxious but you don't think its just because he questions his academic competence, is that what you're saying?

A. No. I think he questions his whole worth now. Maybe if you took his academic competence out — he questions his whole worth.

Q. Doesn't this say contribute? Isn't that what it says? Isn't that the correct word there?

A. It says contribute. I don't know if it contributes.

Q. It doesn't say solely responsible, does it?

A. No. I say I don't know if it contributes.

Q. The cycle of negative attitudes and feelings causes depression and results in Michael's difficulty of focusing attention on tasks and to exert sufficient energy for task completion to meet with success. Do you agree or disagree with that?

A. Absolutely disagree.

[233] Q. Absolutely disagree. Absolutely disagree with that, is that correct?

A. Absolutely disagree, yes.

Q. Well first of all do you agree that there is a cycle of negative attitudes and feelings?

A. Yeah, there's negative attitudes and feelings, absolutely.

Q. All right. Do you agree that there is depression?

A. Yeah, there's some depression, yes.

Q. Do you think the cycle of negative attitudes and feelings have something to do with the depression?

A. Absolutely. Up to that point I agree with the statement.

Q. All right. So you don't disagree absolutely, do you?

A. Yes, of course I do. I disagree with the statement. I'm not saying —

Q. Do you know what the word absolutely means sir?

A. Yes, it means —

HEARING OFFICER: Why don't you let him finish what he was saying.

A. I disagree with the statement absolutely. The statement is stating that the cycle of negative attitudes and feelings cause depression and results in Mike's difficulty to focus, etc. is a statement. Up until that point if you want to take those words out and we can play with semantics the cycle of negative attitudes and feelings cause depression absolutely. They would in anyone. But then to result in Michael's difficulty to focus attention on tasks and to exert sufficient energy for task completion to meet with success, no. No, I [234] don't think they have any effect on him —

Q. You don't think they have any effect — no effect at all, right?

A. No. Michael has a learning disability that's why he can't focus his attention on a task. * * * depressed —

Q. All right. And you say sir that if we — that it's the learning disability results in Michael's difficulty to focus attention on tasks and to exert sufficient energy, that would be true, is that right?

A. I'd believe that, yes.

Q. But when it says cycle of negative attitudes and feelings cause it, that you don't agree with, that's right?

A. I don't agree with that at all.

Q. All right. Lets go on to the next page. Michael uses defense mechanisms distantiation, regression and denial to avoid dealing with the perceived conflicts. Do you agree or disagree?

A. I find it —

MR. GALLAGHER: I would like to object to this kind of line of questions. The word distantiation is a kind of some sort of a jargon to * * * and should not be an addition.

MR. BERMAN: I — all I'm asking Mr. Panico is whether he agrees, disagrees or has no opinion as he has told me he has no opinion.

MR. GALLAGHER: I would like you to use language that is commonly used in North America and the word distantiation is not commonly used in North America.

[235] MR. BERMAN: Mr. Gallagher —

HEARING OFFICER: Hold on. Let me intervene here for a moment. Distantiation is a psychological term. If you want to define it so that Mr. Panico knows what it means —

MR. BERMAN: I don't —

HEARING OFFICER: Or —

MR. BERMAN: Madam Hearing Officer I just want to find out at this point what he agrees with and doesn't agree with in these paragraphs. And if he doesn't understand the paragraph that he's read twenty-five times he can tell me that too.

HEARING OFFICER: All right. I'll allow it and I would add that if you had only said that * * *

MR. BERMAN: If you don't understand it, say so.

A. I don't agree with the sentence.

Q. You don't agree with it?

A. Not at all.

Q. Do you know what distantiation is by the way?

A. It was explained to me.

Q. By whom?

A. By Mr. Gallagher.

Q. And what did Mr. Gallagher tell you it means?

MR. BERMAN: Strike the question.

Q. What do you understand it to mean?

[236] A. O.K. I would have to give you — I wrote down in my little notes he explained it to me at the time. Its subject to the effect of they give you an example say you say some, I think the example they used was, there was a girl in a cabin, an old run down cabin, and she was there with old rags hanging on her and everything else and Michael wouldn't admit that the scene was a sad one but rather picked out minute details in the thing that the girl was dressed in such and such clothes, the cabin was brown, etc. Not focusing him on the subject matter but trying to withdraw into * * * facets of it.

Q. And its your opinion that Michael doesn't distantiate, is that the correct word?

A. I said I don't agree with it, yes.

Q. All right, you say he doesn't distantiate, is that correct?

HEARING OFFICER: I think if you * * * the sentence a little more.

Q. All right. Do you agree that he does? You say he doesn't.

A. I said I don't agree with the sentence.

Q. I'm asking you does Michael engage in distantiation? That he used distantiation as a defense mechanism.

A. If that's the correct definition of it — I don't know the correct definition of distantiation. That's the way it was explained to me. I asked a psychologist [237] who had no idea what it was which was Dr. Isenthal. He didn't know what it meant.

Q. Now I'm asking you that based on your understand of the term do you think he engages in distantiation?

A. No.

Q. All right. Do you think he engages in repression?

A. Alone as itself, everybody engages in repression. You repress what you want to repress. You don't go around thinking about your mother getting hit by a car every day of the week, you repress. Does he do it? Of course he does. Does he do it in the context of this sentence? No.

Q. Thus he becomes more demanding and critical of himself and questions his self-worth. Do you agree with that?

A. Not in the context in which it's used in that paragraph.

Q. Do you think he becomes more critical of himself when he has problems?

A. When he has a problem?

MR. BERMAN: Yes.

A. I don't think so. No more than anybody else.

Q. Do you think he becomes more critical of himself when he has a problem sir?

A. What type of a problem?

Q. A problem with learning.

A. More critical of himself, no.

Q. You don't think so.

A. No.

Q. He doesn't become any more critical of himself?

A. No.

[238] Q. And you don't think he questions his self-worth, is that correct?

A. He questions his self-worth quite often.

Q. And do you think becoming critical of oneself and questioning one's self-worth might be related concepts sir?

MR. GALLAGHER: Is that the last, I think he's answered to a * * * conclusion that that's a statement of fact * * *.

MR. BERMAN: Fair enough.

Q. Michael is presently being medicated for migrane headaches under the care and treatment of Dr. Lot at MGH. Is that true in this report sir?

A. Yes it is.

Q. I believe you testified that in your opinion Michael did not have a vocabulary of two hundred words, a reading vocabulary of two hundred words.

A. * * *

Q. Did you say that that was one of the things wrong with the plan. The plan said he had a reading vocabulary of two hundred words and that was a * * *.

A. I don't think that's quite what it says. It says Michael has a sight vocabulary of two hundred words. Michael has a very extensive vocabulary. Sight vocabulary of two hundred words is not correct.

Q. All right. Did you ask anyone where the information came from that Michael has a sight vocabulary of two hundred words?

[238A] A. I never had the opportunity to ask anyone.

Q. Did you try to call anyone to ask about that?

A. No I did not.

Q. Did you ever show Dr. Lot the statement that Michael has a sight vocabulary of two hundred words?

A. No I did not.

Q. Did you ever ask Dr. Levine for his comments on that?

A. No I didn't.

Q. Did you ever ask Miss Mason whether any of their ideas or any of the tests they performed, that she performed are reflected in the educational plan for Michael?

A. * * *

Q. Did you ever ask Miss Mason whether or not any of her testing or her statements about testing were incorporated into the educational plan for Michael?

A. No I did not.

Q. Did you ever ask Miss Mead whether any of her testing diagnosis or ideas were incorporated into the educational plan for Michael?

A. No they weren't available when this statement was presented to me.

Q. Did you ever ask them sir?

A. I said no they were not available when the plan was presented to us.

Q. All right. Did you ever try to reach any of them by telephone?

A. No I did not.

[239] Q. Is it your understanding sir, that if a person wasn't present at the June 4th core meeting that person could not have contributed to this plan, is that your understanding sir?

A. I'd have to answer that with more than a yes or a no. My understanding is we are being presented with a plan for my child which was supposed to be developed on that date. If the people who supposedly offered input aren't there to answer my questions or at least offer input as to how the plan is presented, there was no way the input, in my mind, would be valid. I had a psychologist and I had two testers who supposedly, the indications are given to me, had input or should have had input or possibly could have but they were not available for me to even ask a question of them as to how their input or what they derived their input on. So I can say I didn't. No I did not call them in July and say did you have input. I didn't even know their numbers. At this point in time I was given a plan to accept or reject.

Q. Did you call them in June?

A. I did not have a plan in June.

Q. Did you ever find out in June whether or not they had contributed to this plan?

A. I didn't have a plan.

Q. You were able to find out Mr. MacAlair's number, weren't you?

A. Yes I was.

[240] Q. Did you try to find out Miss Mason's?

A. No I didn't.

Q. Did you try to find out Miss Mead's?

A. No I didn't.

Q. Now did you ever tell Mr. Foley that Mrs. Aaron had told you that Mr. Barrows ruined the Memorial School?

A. Good question. When I met with Mr. Foley the first time in his office in the summer I believe August of Mike's second grade, I don't believe I ever told him directly that Barrows ruined anybody. But I think expressed concern over Dick Barrows, the fact that he denied me a core, some of the statements that he had made to me and the events that had happened in the past. Whether I told Mr. Foley I know Mr. Foley was present when I went before the School Committee when I made the statement. I don't think at that time that I made the statement that Dick Barrows ruined children though I might have.

Q. Did you say that Mrs. Aarons had said it?

A. I don't recall. I very well

Q. All right. The question was this. Did you ever tell Mr. Foley that Mrs. Aaron had said to you that Mr. Barrows had ruined the Memorial School?

A. I don't think I ever said he ruins the Memorial School but he ruined some children in the Memorial School. And whether or not I said it to Mr. Foley I answered I don't recall. I very well might have, I'm not certain.

[241] Q. Well what did Mrs. Aaron say to you about ruining the school?

A. She didn't say ruined the school she said — I'd like to refer to the notes I made that day.

Q. Is that because you're unable to recall sir, is that your notes?

A. No I think its just a very. I can recall very well but I think its a very pointed question — I don't want to make a mistake. I'd like to be very certain as to the exact terminology and I think I wrote it down.

Q. All right. Why don't you quote that.

A. Mrs. Aaron told me that she was gonna tell me something and if we were ever adversaries across a table that she will lie, she said I'll lie. And Dick Cavanaugh told her he said he would swear to it. My wife and I were both present and she told me Michael had, and I put it in quotes, "Memorial School Syndrome, Barrows ruins kids like Mike. They can't fire him because he's tenured." We then went on to have a long discussion about Mr. Barrows to the point where she said — I don't think I have it down here but I do recall it as plain as day, Mr. Cavanaugh was present, that the only way they could fire him would be if he committed a sex crime because he was tenured. That he ruins it, everybody is aware of it, he's no good to work with, the teachers don't like him, they've got a lot of problems with parents, and she went on and on at great length about Mr. Barrows in the Burlington School — Memorial School.

[242] Q. Was that your understanding sir, that Mr. Barrows could only be fired if he committed a sex crime?

A. I have no idea whatever. I —

Q. You have no understanding of that, is that correct?

A. I don't know. I don't know what tenure — what it does protect and what it doesn't protect.

Q. Do you have tenure in your job sir?

A. No I don't.

Q. Do you have any protection against being arbitrarily dismissed?

A. Well I have some sort, sure. Civil Service.

Q. You have Civil Service Protection don't you sir?

A. Yes, yes I do.

Q. And is it your understanding about your job that you could only be dismissed if you committed a sex crime?

A. Absolutely not.

Q. Now I believe you testified that in February of 1979 Michael was a patient in a hospital?

A. That's right.

Q. For how long?

A. * * * time in the hospital?

MR. BERMAN: That's right.

A. I think he was admitted 2/8 and discharged 2/11, four days.

Q. And that was at the Lawrence Memorial?

A. That's correct.

Q. And he also was down at the MGH for —

A. He was at the MGH the day before when they rushed him [243] from Dr. Levine's office.

Q. And did you notice any difference in Michael's behavior before and after the hospitalization?

A. No.

Q. Did you notice any difference at all in his attitudes before and after the hospitalization?

A. None whatever. Other than he was tired for a while after the hospitalization.

Q. Other than that you say the hospitalization had no emotional effect on him, is that correct?

A. Um hmm.

Q. When did you first hear of the Carroll School?

A. May 18th.

Q. And who told you about it?

A. It was I — this is where I think I testified earlier — I don't recall if it came up at the meeting where we were all present, or if it was said either by Miss Mead or Miss Mason after the meeting. That was the first time I heard of it, that day. It was then also reiterated because we discussed subsequent to the meeting, this I recall emphatically, outside in the hall with Catherine Black.

Q. The first time that the Carroll School was ever mentioned to you it was mentioned by either Miss Mead or Miss Mason, is that true?

A. No, I don't recall. I discussed it and we mentioned it with one of them, either during or after the meeting. I felt it was after. I don't know if it was raised at the [244] meeting. Someone made a remark that we should look into a school specializing in learning disabilities. Two names were mentioned, the Carrol and the Landmark Schools. Until that day I had never heard of either school and never even knew they existed.

Q. Did you make that remark?

A. I just told you I never heard of the Carrol School or the Landmark prior to that day.

Q. Did your wife make that remark?

A. She had never heard it.

Q. Did Mrs. Aaron make that remark?

A. I don't recall. I don't know if it was her, it was someone — I know I discussed it with Catherine Black. I also —

Q. Do you think Mrs. Black may have raised that question — made the remark?

A. At the meeting?

MR. BERMAN: Yes.

A. She could have. I said it was discussed afterwards with Miss Black. It could have been raised by her right at the meeting, yes it could have.

Q. All right. You think that at that meeting Mrs. Black raised the question of sending Michael or she might have raised the question of sending Michael to the Carroll School or the Landmark School, is that right?

A. I don't think so. I said it possibly could have been Mrs. — I'm almost —

Q. Possible.

[245] A. I'd have to say no. I'd have to say with certainty it was not her at the meeting.

Q. All right. When is she — Now I'm trying to find out who is — this is the May 18th meeting. You were present?

A. Let me tell you who was present.

Q. Go on tell me who was present please.

A. On the May 18th meeting there was Mead, Mason, Black, Aaron, Fornier, myself and my wife and I'm not certain although I'd have to state with almost certainty that Sally Hennessey was there. We did have a sign in sheet. But they were there.

Q. All right. Does it seem to you that at that meeting —

A. Oh, wait a minute now. Let me back it off — hold on. I'm trying to get my thing in perspective here. Yes they were there at that meeting, absolutely.

Q. Now can you remember whether or not the person who raised the Carroll School or the Landmark School for the first time in your hearing was Mr. Hennessey, or Miss Hennessey?

A. No I can't.

Q. Do you think she might have been the one who did it?

A. I don't recall if it was even said right at the meeting. I'm still —

Q. O.K. You're not even sure —

HEARING OFFICER: Please let me break in for a moment. I think I've heard Mr. Panico testify that he believes that he had not heard of the Carroll [246] School until that day.

MR. GALLAGHER: That's right.

HEARING OFFICER: Is it a specific relevance that you are leading up to?

MR. BERMAN: Yeah, I want to find out who said it, yes.

HEARING OFFICER: Do you think you can clarify the purpose?

MR. BERMAN: Well, I'd rather not at this moment —

HEARING OFFICER: Well its just that its taking a long time to get * * * of all of this and you know if not really important I would just as soon drop it. If you think its important I can let you go on.

Q. O.K. Would it be fair to say that you can't remember whether the Carroll School was mentioned at the meeting or not?

A. I can't, no I can not.

Q. You can't remember whether it was mentioned —

A. When I say meeting, the formal meeting prior to us, you know, getting up and few people talking. When we were actually sitting down at the meeting discussing my son I can't remember if it was mentioned then or if it was remembered immediately thereafter.

Q. It was mentioned somewhere out in the hall, your sure of that?

A. No, no. It was mentioned a second time because then I [247] talked to Catherine Black, my wife and I talked to Catherine Black, asked her about the Landmark and Carroll Schools, asked her which one was better, and she told us if we were gonna look, look at both of them and she also at that point reiterated the fact or told us that Michael's program had been cut down from an hour to a half an hour, that Michael wasn't getting the education, that they were making Michael sit in the classroom and boy if we didn't get him into a school quickly we were gonna destroy him. That was her — that was what transpired in the hall. What happened in the meeting, who made the mention of Carroll or Landmark, I do not recall. If it was in the meeting or in the classroom after the meeting.

Q. By the way, did you — were you here when Mrs. Black testified on September 10th?

A. Um hmm.

Q. Did you hear her testify that if Michael hadn't been sent to the Carroll School he would have been destroyed?

A. Oh I don't know if she used any words like that.

Q. I don't think she used any words like that at all, did she sir?

A. No, I don't think she said that in her testimony at all.

Q. And in fact she was asked her opinion of John MacAlair's class, wasn't she?

A. I'm sorry, she was —

Q. She was asked for her opinion of John MacAlair's class, wasn't she?

A. Yes she was.

[248] Q. She had a good opinion of it, didn't she?

A. For certain people, but not for Michael, I remember that part of the testimony.

Q. That's your remembrance, is that correct?

A. Yeah. I think if you play back the tape you'll find it.

Q. Well now let me get back to that last question. If you didn't hear about the Carroll School at the meeting of May 18th or the Landmark School, then it would be fair to say the first time you heard about it was out in the hallway after the meeting, is that right?

A. I explained it. It either came —

Q. You haven't —

A. At the meeting or following the —

Q. It happened at the meeting?

A. I said it either — don't put words in my mouth — either, at the meeting, when we were sitting down, or when we broke and I spoke to Miss Mead and Miss Mason. We spoke to them together and alone. In other words when I say alone I don't mean that we went in a corner, I mean we were talking to them one at a time and we were talking to both at one time. Some-

where in that context of the meeting or these discussions afterwards and I said I believed it was either Miss Mead or Miss Mason, I couldn't recall who. It very well might have been Sally Hennessey, I don't recall who. But prior to discussing it with Catherine Black it was mentioned.

[249] Q. What I'm asking you sir is this, did the discussion after the meeting take place in the hall?

A. No. The discussion, the original discussion after the meeting took place right in the classroom.

Q. It took place in the classroom.

A. Yes.

Q. Now would it be fair to say that you either heard about the Carroll School for the first time in the discussions after the meeting or at the meeting itself?

A. Yes, absolutely.

Q. And you can't tell me which, is that right?

A. Exactly, no I can't.

MR. BERMAN: No further questions.

HEARING OFFICER: Thank you. You don't have any further questions at all.

MR. BERMAN: No.

HEARING OFFICER: O.K. Now I'm going to allow you re-direct and then I'm gonna have a couple of questions myself.

RE-DIRECT BY MR. GALLAGHER:

Q. Regarding the conversations with various people on the — regarding this education plan that was presented to you.

A. Um hmm.

Q. P-41. Don't even look at it. Had you been invited to give any comments on that plan to anyone?

A. No.

Q. Have you made attempts to contact and deal with the Superintendent of Schools here?

[250] A. Yes I did.

Q. Did you through your lawyer, make an appointment to meet with him at sometime back in August of this year?

A. Yes I did.

Q. Did he attend that meeting?

A. No he did not.

Q. Do you know where Miss Mead lives?

HEARING OFFICER: * * * based on * * * point was there a meeting?

MR. GALLAGHER: There was a meeting.

HEARING OFFICER: With a representative of the School Committee?

MR. GALLAGHER: There were two representatives from the School System.

Q. Do you know where Miss Mead lives?

A. No idea.

Q. Do you know where Miss Mason lives?

A. No.

Q. When did you receive the education plan, you've already testified to this.

A. It was in the end of June, June 27th or 8th.

Q. Do you know when School is out for the year?

A. I believe at least a week or so before that. Maybe two weeks.

Q. When did you have to make your commitment to the Carroll School?

A. I believe it was August 1st.

Q. After you received the education plan, did you make any communications before August 1st, did you make any [251] communications with the Burlington School Department?

A. After receiving it and before August 1st, yes. After receiving the educational plan?

MR. GALLAGHER: Um hmm.

A. I think I might have said yes too quickly. The date, I'm sorry, yes I did. I talked to Mr. Michael because of the fact I wanted something done quickly so that we could get the thing straightened out because of the financial obligation of putting Michael in the Carroll School. I wanted to try to resolve the issue prior to that.

HEARING OFFICER: To whom did you talk?

A. Mr. Michael the Superintendent of Schools. He was busy and then he was gonna be on vacation, etc. It was right around the 1st of August. It could have been a day or two before, it could have been a day or two after. Somewhere in either late July or early August I tried to set up an appointment with him on three separate occasions.

Q. And effectively you were unable to communicate with Mr. Michael before August 1st?

A. Correct.

Q. And therefore you were obliged to make your commitment your financial commitment to the Carroll School?

A. Mr. Michael, I did communicate with him, but he wouldn't sit down with me. Mr. Michael told me to — it was my choice, if I wanted to pay the Carroll School that was my choice, pay it.

[252] Q. Did he offer to make arrangements for you to sit down with a Miss Mason?

A. No he didn't.

Q. Or Miss Mead?

A. No he didn't.

Q. You had spoken with — when was your first communication, the first conversation with Mr. MacAlair?

A. The first conversation was on June 4th at the core meeting.

Q. At that time did Mr. MacAlair tell you anything about his class?

A. He did. Very, very little. All he — more or less we talked about was we met, introduced ourselves. I think an appointment was set up and I was gonna go up and sit in on his class, bring Michael up there to meet him also and I was gonna sit in and observe his class. Also he explained a little bit about his class, what he tries to do, build up the kids egos, the reward system, he tries to take the pressure off them, etc. I asked him specifically, I asked — I shouldn't say I asked him, I asked specifically, I might have asked Jean Aaron relative to his learning — relative to what they could do for a learning disability and it was, you know, that he provided reading, he provided a reading program.

Q. When you had — was some question brought up in cross examination about Michael's supposedly being a discipline problem.

A. That is correct.

[253] Q. And a discussion that you had with Mrs. Hannon?

A. Um hmm.

Q. Did you * * * — in your discussion with Mrs. Hannon she said that Michael widgets and fidgets a lot and shuffles his feet. Did you inquire specifically as to whether he, Michael, got fresh with her or talked back to her in class?

A. I did.

Q. And what was her answer to that?

A. Her answer was no.

Q. Inviting your attention to Mr. Cavanaugh's report at P-40, on page two of the second paragraph of that, does Mr. Cavanaugh spell out that the scores may have been somewhat depressed by emotional factors?

A. Your talking not in this place where he spells test situations and says the test situation was good? Are taling [*sic*] page 2, first paragraph. Oh, I'm sorry. It is my impression that Michael's performance should have resulted in scores rather uniformly in a high average range if other factors had not interfered.

Q. Now you've been cross-examined extensively on a paragraph or three pages upon P-41, am I correct?

A. That's correct.

Q. Now I would like to ask you whether you know or surmise that's the question, its know or surmise, who wrote those, those paragraphs.

MR. BERMAN: I object to the form of the question. I'll take it as know or — I'll take the [254] question as know or if he doesn't know then whether —

MR. GALLAGHER: Then he could say I didn't neither know or neither surmise.

MR. BERMAN: No, I object to the point of the question.

MR. GALLAGHER: All right.

Q. Do you know who wrote them?

A. No I do not.

Q. Did you surmise who wrote them?

A. Yes I did.

MR. BERMAN: Object. These surmises are totally immaterial.

MR. GALLAGHER: I'm trying to — I'm delighted he said that because that's what I'm trying to point out. To surmise as to who wrote it.

HEARING OFFICER: O.k. what Counsellor is saying is that you know, you guess * * *. I would ask you if you have any indication from the report who did write * * *.

A. Jean Aaron.

HEARING OFFICER: On what basis?

A. She told me she was gonna write the educational plan the 27th. She told me she would write the educational plan for Michael. She did not have it as of the 27th — on the 28th she had it. I would have to assume she wrote it. It's not signed by anybody else. It's signed by her.

HEARING OFFICER: On the basis of reports [255] of other people or —

A. I'm sorry —

HEARING OFFICER: I assume that's on the basis of reports of other peop'e or do assume —

A. Oh no, I assume she took that out of reports of other people.

Q. But that is an assumption on your part?

A. Yes it is.

Q. So you know very little about the authorship of that and whether it is in large measure borrowed from other sources?

A. That's right.

Q. And no one has ever — well all right its not signed — Now you were questioned as to your knowledge of people being dismissed from Civil Service positions or tenured positions.

A. Yes I was.

Q. Did you at any time say that a person could only be dismissed for sex offenses?

A. From a Civil Service job?

MR. GALLAGHER: Yes, or

A. I didn't say that that's the only reason he could be dismissed I said he would have to do something like commit a sex crime.

Q. No, but were you quoting this thing from somebody else or was that your opinion?

A. No, I was quoting from somebody else.

[256] Q. Have you ever taken the stand or position that person could only be dismissed from a tenured position because of a sex offense?

A. No I have not.

Q. But that is a quotation from someone else?

A. I — even in that way I don't know if I said he could only — he would have to do something like commit a sex crime. I don't know if I said he could only —

Q. Did you say that or did someone say that to you?

A. That was said to me.

Q. All right. No further questions.

HEARING OFFICER: All right. I'm gonna go back to some of the contact you had with the staff at Mass. General and ask you if you recall which reports of the Burlington Public Schools were shared with the staff there. Did they have, did Dr. Lot, Dr. Schoenfeld and the other person who was involved have access to the full reports not just to the psychological report in May.

A. O.K. In May when we saw Dr. Lot we gave him I think we say him maybe the end of May or the beginning of June, we gave him the psychological report. Whether or not they got the additional records, I'm pretty sure they have, they did get them, but all at that point in time they had to my knowledge when we first met with Dr. Lot, we gave him the psychological test and they had previous Burlington School tests. Whether or not they got, I believe they did get them but I couldn't possible say for certain. I think that would be available in the School records. But I'm pretty sure that they were [257] sent to Dr. Lot.

HEARING OFFICER: Let me ask a point of information. Does the School have a record of transmission of tests to Mass. General?

MR. BERMAN: May 31, 1979, Dr. Lot, MGH, Re: Michael Panico, Dear Dr. Lot:

In order to insure that you have the total package of information regarding Michael Panico I am enclosing our most recent assessment that will be presented at the June 4, 1979 meeting for Michael. I look forward to being able to discuss with you any additional testing.

Thank you for your cooperation in developing appropriate educational planning for Michael according to his specific needs. Sincerely, Jean Aaron.

HEARING OFFICER: O.k. so was sent to Dr. Lot.

MR. BERMAN: On May 31st.

HEARING OFFICER: On May 31st. O.k. Were those discussed at all with Dr. Schoenfeld or who did the testing?

A. Sherman Isenthal, the psychologist. Dina Schoenfeld, exactly what she had I'm not sure about. All I was told is she obtained the records. Dr. Lot told us he sent her everything he had and she said she had looked at Michael's test results and evidently she probably did have those because she had mentioned certain tests where his grade level had gone down in some reading tests, etc. I have to assume that yes, they got everything.

[258] HEARING OFFICER: You had noted that in the discussion that in May when Mr. MacAlair * * * there was some discussion regarding an appointment to appear in his class. Was that appointment * * * with or without Michael. Did he visit the class in June or is there some reason why he didn't?

MR. PANICO: Michael, no. There was no reason. In — On May 25th at the meeting we had with Jean Aaron and Dick Cavanaugh it was suggested at that point in time that we go visit John MacAlair's class and take Michael so Michael could meet the teacher he would have the following years. When we went to Dr. Lot which I believe was the following Monday or Tuesday, that meeting was on Friday I believe, May 25th. The following Monday or Tuesday Dr. Lot told us not to take Michael to that class, he had enough problems. Right now when he didn't know what the hell was going on he wasn't gonna be, you know, don't confuse him any more. We had told him that we had set up an appointment at the Carroll School and we were taking him he said fine. Don't take him, don't confuse him any more than he's confused right now. And he thought it was, you know, not to take him. I think when I talked to John MacAlair I told him that and that was pretty much the reason we didn't go to the classroom.

HEARING OFFICER: So at the advice of Dr. Lot you didn't take Michael when —

[259] MR. PANICO: That is correct.

HEARING OFFICER: And you didn't see it either.

MR. PANICO: I didn't go because that's when Dr. Lot had sent us down to Sherman Isenthal and had sent the records and I was waiting to find out — at this point in time we were still told this was a class for emotional children and we weren't 100% certain Michael wasn't a primary emotional problem. Dr. Lot hadn't finished the test.

HEARING OFFICER: O.k. Within one of the reasons that you've given for rejection of the educational plan you had questioned the effect of the * * * and said that, if I have * * * correct, you said that Michael couldn't read at all and I wonder if you had said that, you know, could not read at all or * * *.

MR. PANICO: If you gave Michael a sentence like The dog went down the street, it might take him three minutes to read it and he probably wouldn't have it right. That to me is for all intents and purposes, illiterate. Now he's improving and he has improved immensely in the last month or so on simple sentences but going into the point of these tests Michael if he was given help could read. I think maybe I should bring this point up and as far as the test results, Catherine Black's tests are in here and the — her remarks of the June 4th core meeting which [260] aren't in there, Catherine had stated at that meeting that her test results were severely inflated because the time was taken completely off with Michael and she gave him all kinds of help and let him break words up into syllables and long and short vowel sounds and she helped him — she was trying to test to see what he knew not what he could do. Michael can't read. Michael can't read exit and Michael can't the simple words. Sometimes he can read a few words, yes. Sometimes he can even read a sentence too but most of the time he can't. When I said Michael can't read I say that to say that Michael reads at the third grade level or to say Michael has 200 sight words is absurd. No way he could have 200 sight words.

HEARING OFFICER: Then you disagree with those that * * * sight vocabulary and skills at oral reading or —

MR. PANICO: Primarily his sight vocabulary. His skill at oral reading the measurement I'm not certain of. What's a second grade, second month level at a 10 percentile as compared to you know, second grade, second level, 95 percentile I'd have to see, you know, you have to know how to measure that.

HEARING OFFICER: Do you believe that that * * * recorded by the MGH?

MR. PANICO: Michael read better a year and a half ago — Michael read better when he was tested in the second grade. in my opinion, Michael was a [261] better reader in the second grade. Early in the second grade than he is now.

HEARING OFFICER: So you think there has been some regression in the reading ability?

MR. PANICO: Yes I do.

HEARING OFFICER: In the last year?

MR. PANICO: Within the — just the last year.

HEARING OFFICER: Now is that based on your observation or is that * * *.

MR. PANICO: No, only on my observation. At the end of the second grade Michael was starting to read. At the end of the third grade Michael wouldn't even attempt it.

HEARING OFFICER: Do you believe that the difficulty that you were talking about in relation to his self worth were related to that reading problem or could the reading problem be related to his self image or the reverse?

MR. PANICO: I * * * is that he does now have emotional problems and there is no question in my mind that they're a result of certain consequence of his not being able to learn.

HEARING OFFICER: I'd just like to go back for a moment to * * * in my own mind, you had testified as to a history of contact with the school and discussions of what you thought

were the problems that Michael was having very early and at some point [262] you indicated that the school teacher had given you some information about evaluations and * * * had that information had been given to you * * * or are you saying that you never were given information about * * *

MR. PANICO: What we received when we first signed for the first quarter back in June it contains one, two, three, four, five pages. The third page is evaluation process rights of parents, and it's one page long. When we went through the school records there was quite a bit beyond that one page but we never received it. We only received a point up to saying we were getting a full core. As to whether or not it was given me orally I became aware of it myself and I know we discussed it at different times and I was knowledgeable enough about it. But when we received the last Ed Plan again, when we received the educational plan in March of the second grade we received nothing about the rights and we received the plan this past year in June 28th we received nothing but the educational plan and it does state on the last page that you have a certain right to accept it or reject it. But as to the actual rights you have and additional testing and all that we never received anything.

HEARING OFFICER: O.K. So all the * * * you say you never received in writing. Verbally you may have been given some information as to —

[263] MR. PANICO: Verbally only when I requested it. Right, only when I asked for it.

HEARING OFFICER: And you testified that there was no educational plan that resulted from the June 1977 meeting?

MR. PANICO: No educational plan whatever.

HEARING OFFICER: Was there a statement that had special * * *?

MR. PANICO: Nothing at all.

HEARING OFFICER: When Michael was put on medication from your perception was there any difference in performance as far as * * * to school or his headaches?

MR. PANICO: His headaches eased some what at the beginning. As far as his performance in school it was pretty caustic. It didn't appear to me, at least to me, it didn't appear to affect Michael at all the medication other than maybe relieving the headaches to some degree. None of the different medications ever affected him as far as anything emotional, bahvioral, you know, sleepiness or anything like that.

HEARING OFFICER: Was he able to accomplish any more in school on that medication?

MR. PANICO: No.

HEARING OFFICER: So let's go back to the I.Q. for a moment. The * * * that was written by the March 17, 1978 was the special educational folder.

[264] MR. PANICO: Unless, excuse me, unless the — we construe the letter we received which said its an educational plan but there was no testing, there was core, there was no anything. It says enclosed please a copy of the educational plan which we have developed for your child. Which was the first grade, its exhibit P-2.

HEARING OFFICER: O.K. What was the date on that, do you know?

MR. PANICO: The date on that there, it was attached to a document dated May 31, 1977 it was a cover sheet and it makes mention of counselling, etc. But where it — why an educational plan or what I had no idea at that point in time.

HEARING OFFICER: O.K. One question about the notes that you have as far as the * * * and then could you compile them * * *

MR. PANICO: They have been compiled, the two notes that I refer to the one with the conversation with Dick Barrows which is P-3 was written within a half an hour after the time I

left his office. The other one which related to the conversations of May 25, 1979 between myself, my wife, Jean Aaron and Dick Cavanaugh were made during the course of the meeting where we were sitting and that's why they're sketchy. I did write a memorandum of contact down.

HEARING OFFICER: And the other notes in addition you're talking about, the additional information [265] that you compiled.

MR. PANICO: The documents I think I might have lost.

HEARING OFFICER: Of conversations and phone calls and things like that.

MR. PANICO: No I had kept a chronology as we were going along, most phone calls, those things and little notes as to what transpired.

HEARING OFFICER: Including the meetings of the teachers and things like that * * *.

MR. PANICO: No the meetings of the teachers I didn't keep. I didn't have — those were just as we were putting the thing together recollecting what had happened. There were other meetings which I just didn't recall — these are only the ones that stuck in my mind.

HEARING OFFICER: So the ones that you actually made relative to the * * * to the conversations you had within the meeting with —

MR. PANICO: With Barrows and with Cavanaugh and Aaron. Excuse me, and the notes of the date of the Pine Glen and the Carroll School. Those were made that day.

HEARING OFFICER: O.k. For some reason I have a note in here about whether W. French had tested his LD areas. About his June 4th team meeting in preparation I guess for the plan that or the MGH report?

[266] MR. PANICO: No one — there was no retesting by the MGH.

HEARING OFFICER: Other than the psychological evaluation.

MR. PANICO: That was not available at the June 4th meeting.

HEARING OFFICER: O.K. I think that's about all the questions that I have. Does anyone have any additional questions?

MR. BERMAN: No.

. . . . . .

[The following was filed in the District Court on February 26, 1980.]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil No. 80-359-Z

TOWN OF BURLINGTON and
the SCHOOL COMMITTEE
FOR THE TOWN OF
BURLINGTON,
Plaintiffs,

v.

THE DEPARTMENT OF
EDUCATION OF THE COMMON-
WEALTH OF MASSACHUSETTS
and JOHN DOE, as he is father
and next friend of
JOHN DOE, JR.,
Defendants

COMPLAINT

COUNT ONE

1. Plaintiff, Town of Burlington, is a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts and having its principle place of business at Town Hall, Burlington, Massachusetts.

2. Plaintiff, School Committee of the Town of Burlington, is the duly elected School Committee of said Town of Burlington and has its principal place of business on Center Street in said Town.

3. The Department of Education of the Commonwealth of Massachusetts is a department of state government with its principal place of business in Boston.

4. Defendant, John Doe, is the father and next friend of John Doe, Jr., a minor, and lives in the Town of Burlington.

5. In August of 1979, Defendant John Doe, on behalf of John Doe, Jr., petitioned Defendant Department of Education to hold a hearing on whether his son John, Jr., allegedly a child with learning disabilities, was entitled to be enrolled at the expense of Plaintiff in a private school for children of learning disabilities rather than in a public school of the Town of Burlington

6. The Department, by a hearing officer, conducted hearings on September 26, October 30 and 31 and November 1, 1979 on the application of Defendant Doe.

7. On January 31, 1980, the hearing officer employed by the defendant Department rendered a decision, a copy of which is annexed to this Complaint and made part hereof, by which decision Plaintiffs are aggrieved.

8. The decision of the Department dated January 31, 1980, which decision appears Plaintiffs rest primarily upon the finding and a teacher appointed by Plaintiffs, John McAller, lack the capacity to implement the general objectives of a plan of education devised by Plaintiffs for John Doe, Jr., is erroneous. Plaintiffs and Mr. McAller have the capacity to implement the objectives of the program.

9. Other findings adverse to Plaintiffs made by the Department hearing officer are erroneous in fact or irrelevant to the proceedings.

10. Jurisdiction of this count is based upon the provision of title 20 U.S. § 1415 (e)(2).

WHEREFORE, Plaintiffs pray as follows:

1. That this Court stay the enforcement of the decision of Defendant Department until after hearing of the merits;

2. That this Court, after hearing evidence, enter judgment annulling the decision of the Department dated January 30, 1980;

3. That this Court grant Plaintiffs any other relief appropriate in the circumstances.

COUNT TWO

1. Plaintiffs incorporate by reference the allegations of Paragraphs one through eight.

2. The decision of Defendant, Department of Education dated January 31, 1980 is:

a. In violation of the Constitution of the United States and the Commonwealth of Massachusetts.

b. In excess of Defendants Departments statutory authority or jurisdiction

c. Based upon error of law.

d. Made upon unlawful procedure, including violation of the Due Process Clause of the Fourteenth Amendment.

e. Unsupported by substantial evidence.

f. Arbitrary and precious and an abuse discretion.

3. Specifically, but without limitation, the decision rests upon findings of past procedural irregularities by Plaintiffs, but Plaintiffs had no notice prior to decision that any such procedural irregularities were alleged or to be considered and were prejudiced by such lack of notice. The decision also orders Plaintiffs to pay certain amounts for treatment rendered by various persons to John Doe, Jr., although Plaintiffs received no notice that such payments were in issue.

4. Jurisdiction of this Court is based on Mass. G.L. c. 30A, § 14, the pendent jurisdiction of this Court, the provisions of Title 42 U.S.C. § 1983 and Title 28 U.S.C. § 1343, and Title 28 U.S.C. § 1331, there being more than Ten Thousand ($10,000) Dollars in issue, exclusive of interest and costs.

By Plaintiff's Attorneys,

DAVID BERMAN,
JOHN F. ZAMPARELLI,
Town Counsel

/s/_____
DAVID BERMAN

[The following was filed in the District Court on December 24, 1980.]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TOWN OF BURLINGTON, Plaintiffs	CIVIL ACTION NO. 80-359-Z
-VS-	FURTHER STATEMENT IN OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION
DEPARTMENT OF EDUCATION, ET AL., Defendants.	

Plaintiffs further oppose the application of Defendant Department for a Preliminary Injunction on the grounds that Defendant Does refused to make John Doe, Jr., available for a evaluation in the summer of 1980 when requested to do so by Plaintiffs at the suggestion of this Court. Such an evaluation would have resulted in an IEP for John Doe, Jr., for 1980-1981. Attached to this statement and made part hereof are copies of a letter from Plaintiffs' Counsel to Counsel for the Does dated July 5 [*sic*], 1980 and August 15 [*sic*], 1980 and a copy of a letter from the Does' counsel dated August 21, 1980.

On December 17, 1980 counsel for the Does apparently recognized that his clients had unlawfully refused to cooperate and send Plaintiffs' counsel and counsel for Defendant Department a letter dated December 17, 1980, a copy of which is annexed hereto. The conditions stated in counsel's letter for an evaluation are intolerable — they would require the convening of an evaluation group not previously employed by Plaintiffs for one case only — and have no basis in law. Moreover, it would be impossible for Plaintiffs to evaluate John Doe, Jr., over the Christmas holidays.

Since the purpose of the Preliminary Injunction sought by Defendant Department is to keep John Doe, Jr., in the Carroll School for the remainder of the 1980-1981 school year and since Plaintiffs have been frustrated by action of the Does in their efforts to learn whether the Carroll School is even an appropriate

placement for that year, it follows that the application for Preliminary Injunction should be denied. See *Tuftco v. United States*, 614 F.2d 740, 746 (Ct. Ct. 1980) and case cited.

By Plaintiffs' attorneys,

JOHN F. ZAMPARELLI
DAVID BERMAN
TOWN COUNSEL

/s/_____

DAVID BERMAN
100 George P. Hassett Drive
Medford, Massachusetts 02155
Tel: (617) 395-7520

[The following letters were attached to the preceding Statement in Opposition.]

July 8, 1980

Mr. Gerald B. Gallagher, Esquire
77 Great Road
Acton, MA 01720

Re: TOWN OF BURLINGTON v. DEPARTMENT OF EDUCATION, et al., No. 80-359-Z

Dear Mr. Gallagher:

The Town of Burlington is ready and willing to carry out prior to September 26, 1980 an evaluation of John Doe, Jr. Preparatory to our investigation, we must have the reports of the Carroll School. Will you please send them to us?

Thank you.

Sincerely,

David Berman

August 18, 1980

Mr. Gerald B. Gallagher, Esquire
77 Great Road
Acton, Massachusetts 01720

Re: TOWN OF BURLINGTON v. DEPARTMENT OF EDUCATION, et al., No. 80-359-Z

Dear Mr. Gallagher:

I wrote to you on July 8, 1980 suggesting that you send us certain documents so that we could commence the review which Judge Zobel asked us to conduct prior to the hearing set for September 26, 1980. To date you have not responded to that letter. Would you please do so.

Sincerely,

David Berman

cc: Michael Broad, Esquire
Assistant Attorney General

August 21, 1980

David Berman, Esq.
100 George P. Hassett Drive
Medford, Massachusetts 02155

Re: TOWN OF BURLINGTON v. DEPARTMENT OF EDUCATION, et al.; No. 80-359-Z

Dear Mr. Berman:

This letter is in reply to your letters of July 8 and August 18, 1980.

At the time of the July 7, 1980 hearing, it was suggested that the town, under 766, might make a review of Junior Doe's status. I assumed that the town intended to proceed under its statutory and regulatory obligations in this matter.

After the hearing, Junior's parents, on the basis of prior medical consultations, expressed great concern about the effect of such a review. Doctor Lott's opinion has been that Junior has been much examined, tested by your clients (some of which was unauthorized), and there is a reasonable reluctance on their part to permit further casual intrusions into the life of Junior.

Your letter of July 8, 1980 set forth that "The Town of Burlington is ready and willing to carry out prior to September 26, 1980 an evaluation of John Doe, Jr." Implicit in your letter is a disclaimer of any obligation on the part of Burlington to carry out the evaluation.

In view of the pending litigation, your clients' refusal to pay according to the order of the Department of Education, your clients' refusal to answer my clients' applications of May 5 and 20, 1980 as required by G.L.C. 76, Sec. 16, and no showing on your part of personnel qualified to conduct the evaluation, I see no reason why my client should provide you with reports and other information.

Very truly yours,
/s/
Gerald B. Gallagher

GBG:md

December 17, 1980

Department of Education of
the Commonwealth of Massachusetts
c/o Michael Broad, Esq.
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

Town of Burlington
and the School Committee of
the Town of Burlington
c/o David Berman, Esq.
100 George P. Hassett Drive
Medford, MA 02155

Re: Town of Burlington — John Doe

Gentlemen:

In respect to the above matter, I invite your attention to the fact that there is no outstanding IEP (so called) for John Doe, Junior, for the year 1980-81. It is my understanding and position that it is the obligation of Burlington to provide the IEP.

There have been several letters which have gone back and forth between the school authorities in Burlington and this office or my client. In short, the problem seems to be the ambiguity of the status of the parties, inasmuch as Burlington is both an adversary and a statutory provider of educational services.

From the Does' point of view, we are willing to provide court discovery according to the F.R.C.P. We are also willing with controls to have the boy examined by competent medical personnel. However, we are not receptive to suggestion that personal and private matters be released to adversaries in court proceedings who wear one mask for obtaining the information and another for utilizing it.

With this in mind, I suggest that an arrangement be made whereby an IEP be drawn. Such an arrangement should provide (a) qualified people to examine John Doe, Junior (if needed); (b) the persons compiling the information and drafting the plan be not adversaries in any court proceeding or under the influence of an adversary; and (c) compliance with the statutes and regulations governing the drafting of IEPs.

Very truly yours,
/s/
Gerald B. Gallagher

GBG:rip

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 80-1527.

TOWN OF BURLINGTON, ET AL.,
Plaintiffs, Appellants,

v.

THE DEPARTMENT OF EDUCATION OF
THE COMMONWEALTH OF MASSACHUSETTS, ET AL.,
Defendants, Appellees.

MEMORANDUM AND ORDER
Entered January 28, 1981

We have examined the record and appellants' brief. We cannot say that appellants have made a sufficient showing of likelihood of success on the merits to meet their burden in applying for a stay. There is some force to the argument that the Does may prove unable to reimburse the Town if the Town ultimately prevails. See App. 42. By the same token, however, if the Does are as reliant as appellants claim on Town funding, a stay at this juncture, if later deemed erroneous, will unjustly deprive John Doe, Jr. of the special education to which he has been found entitled. John Doe, Jr., therefore, seems to be the party most vulnerable to irreparable injury. Finally, the Town's contention that the Does unjustifiably shielded John from an evaluation in 1980 has not been acted upon by the district court and is evidently presently before that court in opposition to the Department's motion for a preliminary injunction. Without the benefit of the district court's opinion on the issue, we decline to consider it at this time.

The motion for a stay is denied.

By the Court:
Clerk.

[Cert. c: Clerk, U.S.D.C., Mass.: cc: Messrs. Berman, Broad, and Gallagher]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 80-359-Z

TOWN OF BURLINGTON, et al.

vs.

THE DEPARTMENT OF EDUCATION OF
THE COMMONWEALTH OF MASSACHUSETTS, et al.

ORDER

ZOBEL, D.J.

Both parties having moved for a determination concerning plaintiff's liability to the defendant John Doe for reimbursement of expenses paid or now due in connection with the continuing educational placement of John Doe, Jr. at the Carroll School in Lincoln, Massachusetts, it is,

ORDERED that pending a final determination on the merits, the town of Burlington shall pay forthwith to the Carroll School all monies due and owing for the tuition of John Doe, Jr. at the Carroll School for the current school year; and it is further

ORDERED that pending a final determination on the merits, the town of Burlington shall reimburse the defendant John Doe, Sr. forthwith for all costs and expenses incurred and already paid by him in connection with the placement of John Doe, Jr. at the Carroll School in the amount of $8,837.97. Federal law requires that "the child shall remain in the then current educational placement of such child" during the pendency of any proceedings with respect to the child's placement

and until all such proceedings have been completed. 20 U.S.C. § 1415(e)(3). This mandatory provision, designed to preserve the status quo, has been held in this case to require that John Jr. be maintained at the Carroll School during the pendency of this litigation. Judgment and Memorandum of Decision November 19, 1980. The judgment at that time included an Order that the town of Burlington pay the costs of tuition at the Carroll School as well as incidental expenses for medical and psychological evaluations of John Jr. Doe Sr. has paid some or all of the costs covering John Jr.'s tuition at the Carroll School for past school terms, as well as other expenses. The Town is hereby ordered to reimburse him for those expenses which have already been paid.

February 12, 1981
DATE

/s/ Ryan W. Zobel
DISTRICT JUDGE

[The following was filed in the District Court on November 24, 1981.]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TOWN OF BURLINGTON, ET AL.,
Plaintiffs

CIVIL ACTION
NO. 80-359-Z

VS.

MASSACHUSETTS DEPARTMENT OF EDUCATION, ET AL.,
Defendants.

MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT

Plaintiffs respectfully move that the Court enter summary judgment setting aside the decision of Defendant Department of Education, in so far as it orders Plaintiff to pay tuition and related expenses for John Doe, Jr., at the Carroll School and ordering Defendant Does to return to Plaintiffs any and all monies received for such tuition on related expenses on the grounds that Defendants, having changed their son's placement to the Carroll School while proceedings were pending, are not entitled to any reimbursement for tuition.

In the event that summary judgment is denied upon the aforementioned ground, Plaintiffs move that the Court enter summary judgment determining (a) that its jurisdiction in this action is limited to determining the appropriate placement of John Doe, Jr. for the 1979-1980 school year, (b) that Plaintiffs are not liable for any tuition or related expenses for the education of John Doe, Jr., at the Carroll School beyond the 1979-1980 school year, where the parents declined to make John Doe, Jr., available for evaluations after that time, and (c) that Plaintiffs are, therefore, entitled to be reimbursed for any and all amounts expended by them for tuition or related expenses at the Carroll School after the 1979-1980 school year.

By their attorney,
/s/ DAVID BERMAN